

George Vs. State of Kerala Rep. by Public Prosecutor

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Court : Kerala

Decided On : Aug-09-2012

Reported in : 2012(4)KLT48; 2012(4)KLJ193

Judge : P.S. Gopinathan

Appeal No. : Crl. Rev. Pet. No. 444 of 2002

Appellant : George

Respondent : State of Kerala Rep. by Public Prosecutor

Judgement :

1. The revision petitioner is the accused in S.T.No.1834/1997 on the file of the Judicial Magistrate of First Class-I, Thrissur. PW5, the Excise Inspector attached to Thrissur Excise range prosecuted the revision petitioner alleging offence under Section 58 of the Abkari Act with a plea that at 8 p.m on 23.3.1996, PW1, the Circle Inspector of Police attached to Thrissur Town East Police Station detected out 41 packets, each containing 100 mls of illicit arrack and 37 packets, each containing 160 mls of illicit arrack from the possession of the revision petitioner.

2. Material objects were seized and samples were taken. Following the detection and seizure of the illicit arrack, PW1 registered a case as Crime No.176/1996 of Thrissur Town East Police Station. The revision petitioner along with the material objects and samples were forwarded to PW5, who re-registered a case as Crime No.13/1996 for which Ext.P2 occurrence report was preferred. After completing

investigation, charge sheet was submitted before the trial court.

3. Revision petitioner pleaded not guilty. Therefore, he was sent for trial. On the side of the prosecution, Pws 1 to 5 were examined. Exts.P1 to P4 and Mos 1 to 3 were marked. On appraisal of the evidence, the learned Magistrate arrived at a finding of guilt. Consequently the revision petitioner was convicted and sentenced to undergo simple imprisonment for six months. Aggrieved by the above conviction and sentence, he preferred CrI.A.No.177/1999 before the Sessions Judge, Thrissur. The Additional Sessions Judge, to whom the appeal was subsequently made over, by judgment dated 19.3.2002, concurred with the trial court and the appeal was dismissed. Assailing the legality, correctness and propriety of the above conviction and sentence as confirmed in appeal, this revision petition is preferred.

4. Heard the learned counsel for the petitioner and the Government Pleader. Perused the judgments of the courts below.

5. Pws 1 and 2, the Circle Inspector and the Sub-Inspector of Police had given evidence in support of the prosecution case. Pws 3 and 4, who are attestors to Ext.P1 seizure mahazer, though admitted their signature, denied witnessing the arrest of the revision petitioner and seizure of the contraband. Ext.P3 report of the chemical examiner would show that the samples contained 29.94% and 26.35% of ethyl alcohol by volume. Believing the testimony of Pws 1 and 2 supported by Ext.sP1 and P3, the courts below entered into a finding of guilty and conviction thereunder. I find no error, illegality or impropriety in the finding.

6. As regards the sentence, I find that it is hit by Section 262(2) of the Code of Criminal Procedure (Cr.P.C) since the revision petitioner was tried summarily. In a summary trial, in view of Clause (2) to Section 262 Cr.P.C, no sentence of imprisonment for a term exceeding three months shall be passed in the case of conviction under Chapter XXI Cr.P.C. Th learned Magistrate had gone wrong in awarding sentence exceeding three months. The appellate court also failed to take note of that illegality. Therefore, I find that the sentence requires modification.

In the result, the revision petition is allowed in part. While confirming the conviction, the sentence is reduced to simple imprisonment for three months. The revision petitioner is directed to surrender before the trial court for suffering sentence. The trial court shall see the execution of sentence and report compliance.

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