
(2011) 03 KL CK 0047

In the High Court Of Kerala

Case No : Criminal R.P. No. 141 of 2006

Ashraf

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Kerala Abkari Act, 1077 — Section 15C, 55

Citation : (2011) 2 KLT 211

Hon'ble Judges : V.K. Mohanan, J

Bench : Single Bench

Advocate : U.K. Devidas, for the Appellant; V. Tek Chand, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V.K. Mohanan, J.—The revision Petitioner is the second accused in S.C. No. 348 of 2004 on the file of the court of Additional District and Sessions Judge (Adhoc), Fast Track Court No. -III, Manjeri and the challenge is against Annexure-D charge framed against him for the offence u/s 15C of the Abkari Act.

2. The prosecution case is that at about 6.15 p.m. on 13.4.2002, when the Police conducted search in the hotel of the first accused, the first accused was found selling Indian Made Foreign Liquor to the second accused at the kitchen of the hotel, which is belonging to the first accused and the Petitioner herein/second accused consumed Indian Made Foreign Liquor inside the hotel which is a prohibited place and therefore, according to the prosecution, the Petitioner had committed the offence u/s 15C of the Abkari . Act. Based upon the report filed after investigation in Crime No. 120 of 2002 of the Edakkara Police Station, the learned Judicial First Class Magistrate Court, Nilambur committed the case to the Sessions Court and accordingly, S.C. No. 348 of 2004 is instituted in the above court. On appearance of the accused, a formal charge is framed against the Petitioner as well as the first accused. It is the above charge against the second accused, challenged in this Criminal Revision Petition.

3. I have heard Sri.U.K. Devidas, learned Counsel appearing for the revision Petitioner and the learned Public Prosecutor.

4. Learned Counsel for the Petitioner advanced two fold arguments contending that the alleged place of occurrence even, according to the prosecution, is the kitchen of the hotel of the first accused and the same is not a public place and the second contention is that the Police has no case that the Petitioner had consumed liquor and as stated by the Police in the charge, the first accused was found holding liquor in the glass purportedly to be given to the revision Petitioner. So, in the light of the decision reported in Dinesan Vs. State of Kerala, , according to the learned Counsel, no charge would lie against the revision Petitioner.

5. Learned Public Prosecutor submitted that the said decision is not applicable in the present case since the offence alleged therein is u/s 55(a). It is also the contention of the learned Public Prosecutor that the revision Petitioner is not in any way connected with the conduct of the hotel, but he is a total stranger and therefore, he is also liable to be proceeded against and the kitchen of the hotel is not a place permitted for consuming alcohol or liquor.

6.I have carefully considered the arguments advanced by the learned Counsel for the revision Petitioner as well as the learned Public Prosecutor and I have also perused the documents produced along with the Revision Petition including the police report, charge and the order of the learned Sessions Judge framing charge against the revision Petitioner.

7. As correctly pointed out by the learned Counsel, even according to the prosecution allegation and materials, there is no averment to the effect that the Petitioner is seen consumed Indian Made Foreign Liquor in a public place. The kitchen of a hotel will not come under Explanation I where different individuals or groups of persons consume food. It is also crystal clear from the materials produced by the prosecution that the prosecution has no case that the Petitioner had been found consuming liquor. Section 15C prescribes the consumption of liquor in public places and the prohibition under the above section is against the consumption of liquor in a public place. In the absence of specific allegations and materials that the Petitioner had consumed liquor in any public place, I am of the view that the charge u/s 15C of the Abkari Act will not lie against the Petitioner and there fore, the charge dated 27.12.2005 ordered against the Petitioner for the offence u/s 15C of the Abkari Act in S.C. No. 348 of 2004 is not sustainable against the Petitioner and is liable to be set aside to that extent and the Petitioner is entitled to get a discharge.

In the result, this Criminal Revision Petition is allowed setting aside Annexure D, court charge to the extent the same is against the Petitioner in S.C. No. 348 of 2004 on the file of the court of Additional District and Sessions Judge, Fast Track Court No. III, Adhoc, Manieri and the Petitioner is discharged from the above Sessions Case.