
(2009) 07 KL CK 0118
In the High Court Of Kerala
Case No : Criminal M.C. No. 2010 of 2009

Dinesan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 01-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Kerala Abkari Act, 1077 — Section 15C, 64A

Citation : (2009) 3 KLT 471

Hon'ble Judges : Sasidharan Nambiar, J

Bench : Single Bench

Advocate : C.C. Thomas, M.G. Karthikeyan and Nireesh Mathew, for the Appellant; Jikku George Jacob, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Sasidharan Nambiar, J.—Petitioner is the first accused in Crime No. 321/2008 of Chingavanam Police Station, which is taken cognizance as C.C. No. 820/2008 on the file of Judicial First Class Magistrate's Court, Changanassery. Annexure-A final report shows that prosecution case as against nine accused is that on 17.8.2008, Accused Nos. 2 to 9 were found sitting in Karibinkala Family Restaurant consuming liquor and petitioner/first accused was working as Supervisor there and they thereby committed offences under Sections 15C and 64A of the Abkari Act. This petition is filed u/s 482 of Code of Criminal Procedure contending that even if the case as alleged in Annexure-A F.I.R. and final report is accepted, it will not make out an offence either u/s 15C or u/s 64A of the Abkari Act and therefore, continuation of the proceedings as against the petitioner is only an abuse of the process of court and it would disentitle the petitioner from participating in the auction and in getting renewal of the licence issued under the Abkari Act.

2. Learned Counsel appearing for the petitioner and learned Public Prosecutor were heard.

3. Section 15C of Abkari Act provides that no person shall consume liquor in any public place unless consumption of liquor in any such place is permitted under a licence granted by the Commissioner. Prosecution case is not that petitioner consumed liquor from Karimbinkala Family Restaurant where there was no licence granted by the Commissioner of Excise. It is the case that Accused Nos. 2 to 9, who were taking food, were found consuming liquor. At best, from the mahazar, it could be said that petitioner was also there at that time and he was pouring liquor in glasses to the other accused. But, that will not attract an offence u/s 15C of Abkari Act, as against the petitioner.

4. Section 64A of Abkari Act provides penalty for allowing land, building, room, etc. for manufacturing, sale or storing for sale of liquor or intoxicating drug. Section 64A reads as follows:

Penalty for allowing land, building, room etc. for manufacture, sale or storing for sale of liquor or intoxicating drug:- Notwithstanding anything contained in this Act, or in any other law for the time being in force, any owner or occupier or person having control of, any land, building, room, space or enclosure, permits any person to use such land, building, room, space or enclosure for manufacture, sale or storing for sale of liquor or intoxicating drug in contravention of this Act or of any rule or order made thereunder or of any licence or permit obtained under this Act shall be punishable with fine which shall not be less than twenty five thousand rupees unless he proves to the satisfaction of the court that all due and reasonable precautions were taken by him to prevent such use.

5. It is absolutely clear from Section 64A that only if an owner or occupier or a person having control of any land, building, room, space or enclosure permits any person to use such land, building, room, space or enclosure "for manufacturing, sale or storing for sale of liquor or intoxicating drug in contravention of the Act or of any rule or order made thereunder or of any licence or permit obtained under the Act" shall be punishable under that Section. Therefore, the offending permission should be for using such land, building, room, space or enclosure either for sale or for manufacture or for storing for sale. There is no allegation either in the F.I.R. or in the final report that petitioner, who is in control of Karibinkala Family Restaurant, had permitted Accused Nos. 2 to 9 for manufacture or sale or storing for sale of liquor to attract an offence u/s 64A of the Abkari Act. Even if the petitioner permitted Accused Nos. 2 to 9 to consume liquor in violation of the provisions of Section 15C of the Abkari Act, it will not attract an offence u/s 64A of the Abkari Act. Therefore, continuation of the proceedings as against the petitioner is only an abuse of process of the court. It is to be quashed.

The petition is allowed. Crime No. 321/2008, Annexure-A F.I.R. and final report and C.C. No. 820/2008 on the file of Judicial First Class Magistrate's Court, Changanassery as against the petitioner are quashed.