

(2017) 08 KL CK 0022
In the High Court Of Kerala
Case No : 1914 of 2010 (G)

JOMON? KARINKUTTIKULATHU, KULANADU Vs STATE OF KERALA

Date of Decision : 22-08-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) -
Kerala Abkari Act, 1967, Section 53A, Section 55(a)

Citation : (2017) 08 KL CK 0022

Hon'ble Judges : P.Ubaid

Bench : SINGLE BENCH

Advocate : C.P.UDAYABHANU, C.S.HRITHWIK

Final Decision : Disposed

Judgement

1. The appellant herein challenges the conviction and sentence against him under Section 55 (a) of the Kerala Abakari Act (for short " the Act") in S.C 357 of 2009 of the Court of Session, Palakkad.
2. The prosecution case is that, at about 5.00 p.m on 13.12.2007, at Keralaparambu within the Alathur Excise Range in Palakkad District, the appellant was found transporting 495 litres of spirit contained in 15 plastic cans in a Tata Indica car with pseudo No.KL-01-AH 3680. The offence was detected by the Excise Inspector of the Alathur Excise Range. He arrested the accused and seized the contraband articles including the vehicle as per a mahazar. The original registration number of the vehicle was later

identified as KL-01B-1044. On the basis of the arrest and seizure, the Excise Inspector registered the crime and occurrence report. Without any delay, the accused and the samples were produced in court and the huge quantity of spirit contained in 15 cans was produced before the Assistant Excise Commissioner for necessary action under Section 53A of the Act. Investigation was taken over by another Excise Inspector. After closing the investigation, he submitted final report in court. On committal, the case came up before the Court of Session from where it was made over to the learned Additional Sessions Judge (Adhoc) II, Palakkad for trial and disposal.

3. The accused appeared before the trial court and pleaded not guilty to the charge frame against him under Section 55 (a) of the Act. The prosecution examined four witnesses in the trial court and proved Exts.P1 to P10 documents. The MO1 mobile phone seized from the possession of the accused was also identified during trial. When examined under Section 313 Cr.P.C, the accused denied the incriminating circumstances. He did not adduce any evidence in defence though opportunity was granted by the trial court.

4. On an appreciation of the evidence, the trial court found the accused guilty under Section 55 (a) of the Act. On conviction, he was sentenced to undergo rigorous imprisonment for four years and to pay a fine of 1,00,000/- by judgment dated 16.9.2010. Aggrieved by the said judgment of conviction, the accused has come up in appeal.

5. Of the four witnesses examined in the trial court,

PW1 is the Excise Inspector who detected the offence and registered the crime and occurrence report, and PW2 is the Excise Inspector who investigated the case and submitted final report in court. PW3 is the Excise Guard who assisted the Excise Inspector in the process of detection and PW4 is an independent witness. PW4 turned hostile during trial. However, he identified his signature in the Ext.P2 detection mahazar.

6. PW1 and PW3 have given evidence proving the seizure of 15 plastic cans containing spirit from the possession of the accused. Their evidence is that the Excise team led by PW1 intercepted the vehicle No.KL-01-AH 3680 at Keralaparambu. When the Excise Inspector inspected the vehicle, he found 15 cans containing spirit. The vehicle was driven by the accused in this case. The Excise Inspector arrested the accused on the spot and seized the contraband articles including the vehicle. During investigation, it could be detected that the correct number of the vehicle is KL-01B-1044 and that for transporting spirit illegally a pseudo number was inscribed by the accused on the number plate. There is nothing to show that there was any flaw or illegality or irregularity in the investigation conducted by PW2.

7. The samples collected by PW1 at the spot of detection were well packed and sealed and the samples were produced in court without any delay. The Ext.P5 inventory prepared by the Assistant Commissioner of Excise under Section 53A of the Act shows that he had verified all the properties at the time of preparing the inventory. The Judicial First Class Magistrate having jurisdiction has certified the correctness of the inventory. The certificate

issued by the learned Magistrate shows that the photographs were also verified by him at the time of certifying the correctness of the inventory. The properties were dealt with by the competent authorised officer appointed under Section 67B of the Act and the quantity of liquor was later sold to the Travancore Sugars Limited as authorised by the Commissioner of Excise. The Ext.P5 inventory is admissible in evidence even without examining the Assistant Commissioner who prepared it. The inventory certified by the Magistrate connects the accused with the 15 cans containing spirit. The samples were produced in court, without any delay and the samples were sent for analysis. Ext.P9 report shows that on examination the samples were identified as spirit. It stands proved by PW1 and PW2 that the samples were collected from the quantity of spirit seized from the hands of the accused. Thus, I find that the prosecution has well proved the offence under Section 55 (a) of the Act. I find no scope for interference in appeal. All the factual aspects including the procedure under Section 53A of the Act are well proved.

8. Now the question of sentence. The jail sentence imposed by the court below is rigorous imprisonment for four years. The accused was at his prime age of 29 years when the Police submitted final report in court. No other case of similar nature is seen reported against him, and there is no other conviction to his credit. Being a first offender who happened to transport some quantity of spirit at the prime age of 29. I feel it appropriate to reduce the sentence reasonably in the interest of justice. I feel that rigorous imprisonment for one year will be the adequate

sentence in this case. The default sentence imposed by the court below also can be reasonably reduced, though the fine amount cannot be reduced.

In the result, the the conviction against the appellant under Section 55(a) of the Act in S.C No.357 of 2009 of the court below is confirmed, and the appeal is disposed of accordingly. However, the jail sentence imposed by the court below will stand reduced to rigorous imprisonment for one year. The fine sentence is maintained, but the default sentence will stand reduced to rigorous imprisonment for three months.