

(2012) 11 KL CK 0217

In the High Court Of Kerala

Case No : Criminal Rev. Petition No. 1098 of 2003

K. Gangadharan @ Gangan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 29-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428

Citation : (2012) 11 KL CK 0217

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : P. Vijaya Bhanu, Sri. P.M. Rafiq and Sri. C.B. Mukundan, for the Appellant; Seena Ramakrishnan, for Public Prosecutor, for the Respondent

Judgement

S. Siri Jagan, J.—The petitioner is the 2nd accused in Sessions Case No. 422/1999 before the Assistant Sessions Judge, Vatakara. He was

prosecuted along with another person for offence punishable u/s 55(a) of the Abkari Act. The prosecution case as contained in paragraph 2 of the

judgment of the Magistrate is as follows:

On 23-4-99 at 5.45 P.M. the accused in this case were found by CW1 and the Police party with him, on the road situated at a distance of about

20 metres north from the north eastern corner of the office room of the Muthappan temple near the Railway Colony at Vatakara and also 15

metres west from the Kottaparamb-Railway Station road at Vatakara. On a search being made, it was found that the accused were keeping in

their possession 4 bottles of Golden Star XXX Rum each containing 180 ML and 5 bottles of Extra No. 1 Golden Star Brandy each containing

180 ML, and 2 bottles of Golden Amber Brandy each containing 350 ML and also one bottle of 180 ML capacity containing full of Crown XXX

Rum. The contraband articles recovered from the possession of A1 and A2 were not allowed to be sold in Kerala. The same were transported

illegally from Mahe for the purpose of selling the same in Kerala. The accused thereby committed the aforesaid offences.

The prosecution examined PWs 1 to 6 and marked Exts. P1 to P5 documents. The defence did not adduce any evidence. After considering the

evidence adduced, the Assistant Sessions Judge convicted both the accused and sentenced them to undergo rigorous imprisonment for four years

each and to pay a fine of Rs. 1 lakh each with a default sentence of simple imprisonment for six months each. Set off was also granted u/s 428 of

the Cr.P.C. The petitioner herein challenged the judgments of the Assistant Sessions judge by filing Criminal Appeal No. 181/2001 before the

Additional District and Sessions Court, Vatakara, which was dismissed confirming the conviction and sentence. The petitioner is challenging the

judgments of the courts below.

Among other contentions, the petitioner raises a specific contention that Section 55(a) of the Abkari Act is not attracted on the allegations of the

prosecution. According to him, there is no allegation that the possession of the liquor by the petitioner is in the course of import, export, transport

or transit in violation of the provision of the Act and therefore, Section 55(a) of the Abkari Act is not attracted. According to the petitioner, this

position is well settled by the decision of the Division Bench in Surendran Vs. Excise Inspector, , which has been confirmed in Criminal Revision

Petition No. 220/2001. It is further submitted that even a charge u/s 58 will not lie, since the prosecution has no case that the possession of the

liquor by the petitioner is with the knowledge that the same has been unlawfully imported, transported or manufactured or knowing that the duty

tax or rental payable under the Act has not been paid thereof. Therefore, the petitioner can neither be prosecuted u/s 55(a) nor u/s 58. If at all, the

petitioner can only be made liable u/s 63, which also is very much doubtful. Therefore, the learned counsel for the petitioner argues for acquitting

the petitioner.

2. I have heard the learned Public Prosecutor also. As rightly pointed out by the learned counsel for the petitioner, the prosecution has no case that

the possession of the liquor by the petitioner is in the course of import, export,

transport or transit. No allegations have been made and no evidence had been led also to the effect that the petitioner possessed liquor with the knowledge that it has been illegally imported. Therefore, in view of the decision of the two Division Bench decisions in Surendran's case (supra) and Cr.R.P. No. 220/2001, the petitioner cannot be prosecuted either for an offence u/s 55(a) of the Abkari Act or u/s 58 of the Abkari Act. But, of course, the bottles seized from the petitioner did not contain the seal of the Beverages Corporation. Therefore it cannot be said that the possession of the liquor by the petitioner is legal. Therefore, at least an offence u/s 63 of the Act is attracted. In the above circumstances, I acquit the petitioner of the offence u/s 55(a) and convict him u/s 63 of the Abkari Act. I sentence him to pay a fine of Rs. 5,000/- (Rupees five thousand only). The judgments of the lower courts are modified as above and the Criminal Revision Petition is disposed of.