
(2003) 03 KL CK 0071

In the High Court Of Kerala

Case No : Criminal R.P. No. 959 of 1994

Kannappanunny

APPELLANT

Vs

State of Kerala and Circle Inspector of Excise

RESPONDENT

Date of Decision : 17-03-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 446
Kerala Abkari Act, 1077 — Section 55, 58
Probation of Offenders Act, 1958 — Section 3

Citation : (2003) 03 KL CK 0071

Hon'ble Judges : R. Basant, J

Bench : Single Bench

Advocate : T.P. Varghese, for the Appellant; P.M. Habeeb, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

R. Basant, J.—Against the concurrent verdict of guilty conviction and sentence imposed on the petitioner-accused u/s 55(b) of the Kerala Abkari Act this revision petition is preferred.

2. The gist of the allegations against the petitioner is that he along with his son was engaged illicitly in distilling arrack at 5.30 p.m. on 11.5.1991 in an open place near his house when the Excise Party including PWs 1 and 2 apprehended them. Truly they had allegedly committed the offence punishable u/s 55(b) and 58 of the Kerala Abkari Act.

3. Both the accused persons denied the offence alleged against them and thereupon the prosecution examined PWs 1 to 4 and proved Exts. P1 to P4. PW1 is the Preventive Officer who led the excise party and PW2 is an Excise Guard who was a member of the excise party. PWs 3 and 4 are witnesses who had allegedly witnessed the seizure. They are attestors to Ext. P1 seizure mahazar under which Mos 1 to 8 were allegedly seized. Ext. P2 is the occurrence report. Under Ext. P1 the wash used for spirit distillation as also the end product (liquor)

were seized. They were sent for chemical examination. Exts. P3 and P4 are the reports submitted by the Chemical Examiner.

4. The accused denied all circumstances which appeared in evidence and which were put to them. Their defence was one of total denial. No evidence oral or documentary was adduced on the side of the accused.

5. The courts below concurrently came to the conclusion that the prosecution has succeeded in providing the guilt of the accused. The second accused, the son of the petitioner first accused was released after due admonition u/s 3 of the Probation of Offenders Act. As against the petitioner first accused also the courts took a lenient view. The courts did not impose the mandatory minimum sentence. A sentence of imprisonment for three months and fine of Rs.2000 was imposed.

6. Arguments have been heard. The learned counsel for the revision petitioner submits that the courts below erred in accepting the acting upon the evidence of PWs 1 and 2. Their evidence is discrepant and does not at any rate establish the offence punishable u/s 55(b) of the Abkari Act, contends the learned counsel. Finally it is contended that the sentence imposed is excessive.

7. PWs 1 and 2 are of course Excise Officials and in that sense of the expression are interested witnesses. They certainly have an interest in successful prosecution of the accused, had detected the offence and had initiated steps to prosecute the accused. But this cannot, according to me, reduce them to the category of interested witnesses as to persuade the court to insist on ocular corroboration of their testimony. Every Excise official in duty bound to detect offences and bring the offenders to book. This sublime public duty which public officials are duty bound to discharge cannot at any rate persuade a court to ritualistically insist on ocular corroboration of the evidence of such official witnesses. I have been taken through the evidence of PWs 1 and 2 in detail. There is absolutely not a suggestion even to convey that PWs 1 and 2 had any oblique motive or malice against the petitioner-accused. The evidence of PWs 1 and 2 must in these circumstances receive a reasonable appreciation. PWs 3 and 4 are alleged witnesses to the seizure. They turned hostile to the prosecution. But PW3 admitted his signature in Ext. P1 though he did not subscribe to the contents. The contents of the said contemporaneous mahazar Ext. P1 do eminently support the oral evidence of PWs 1 and 2. Thus such assurance is also available for the evidence of PWs 1 and 2. The articles seized under Ext. P1 produced in court do also afford sufficient corroboration for the version of PWs 1 and 2. Exts. P3 and P4 clearly give no indication of what the raw material was and what the end product was.

8. The learned counsel for the petitioner submits that the evidence of PWs 1 and 2 is improbable. The allegation is that the occurrence took place at a water chal. How could fire be raised in a water chal, it is quarried. The evidence has to be read realistically and not in a myopic or artificial manner. When witnesses stated

that the place of the incident was a water chal obviously it was not their intention to say that the fire was raised in the water in the chal. This alleged incongruity does not at all appeal to me as a sufficient reason to discard the oral evidence of PWs 1 and 2. Various vessels were allegedly used by the accused in the course of their attempt to distil illicit attack. Obviously tubes must also have been used. Such tubes etc. have not been seized and produced before court. It is contended that this knocks the bottom out of the theory that distillation was actually going on. This circumstance also does not persuade me to throw over board the evidence of PWs 1 and 2. The entire articles used for distilling the liquor must have been seized and produced before court. But the mere non-production of those articles does not at all persuade me to throw over board the evidence of PWs 1 and 2 which otherwise is found to be inspiring and satisfactory.

9. It is contended that the complaint has not been examined. The complaint is the official before whom PWs 1 and 2 produced all relevant documents and articles. He has of course not been examined. No specific explanation is sought from any of the witnesses for such non-examination. The complaint is not to speak of any ingredient of the offence. He was expected only to speak about the steps taken by him before launching the prosecution. The non-examination of the complainant is in these circumstances found to be of no crucial significance at all. It is seen that PW1 had given details of all the steps taken in the prosecution. The non-examination of the complainant is also not a sufficient reason to discard the prosecution case.

10. The learned counsel finally prays that the sentence may be modified and reduced. The indulgence shown to the second accused may be shown in favour of the first accused also, it is contended. I must alertly note that the statute prescribes a minimum mandatory sentence of imprisonment. Unless compelling reasons are there, it may not be possible for this court to impose a lesser sentence. The learned Magistrate had come to the conclusion that imposition of a sentence lesser than the statutory minimum would be justified. The learned counsel for the petitioner submits and I note that the trauma of this prosecution has been hanging over the head of the accused for the past more than 12 years. I am in these circumstances satisfied that it is not necessary to insist that the accused must undergo any sentence of imprisonment now. The imposition of the maximum sentence of fine permissible under law--Rs. 5,000 at the relevant time, would serve the end of justice, I am satisfied.

11. In the result

- i. This revision petition is allowed in part.
- ii. The impugned verdict of guilty and conviction of the revision petitioner u/s 55(b) of the Kerala Abkari Act are upheld.
- iii. But the sentence imposed is modified and reduced. In supersession of the sentence imposed on him by the courts below the petitioner is sentenced u/s 55(b) of the Kerala Abkari Act to pay Rs. 5,000/- (Rupees five thousand only)

and in default of undergo rigorous imprisonment for a period of 3 months.

12. The learned Magistrate shall take necessary steps for execution of the modified sentence. The accused shall appear and his sureties shall produce him before the learned Magistrate on 30.6.2003 for execution of the default sentence if the amount is not paid by then. Needless to say, the learned Magistrate shall be at liberty to invoke his powers u/s 446 of the Crl. Procedure Code if the petitioner does not appear as directed above.