
(2002) 05 KL CK 0005
In the High Court Of Kerala
Case No : Criminal R.P. No. 206 of 2000

K.R. Sooraj

APPELLANT

Vs

Excise Inspector and Others

RESPONDENT

Date of Decision : 28-05-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227
Kerala Abkari Act, 1077 — Section 5, 55, 55B, 56, 56A

Citation : (2002) CriLJ 4744 : (2002) 1 KLJ 739

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : C.C. Thomas, for the Appellant; T.K. Latiff, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M.R. Hariharan Nair, J.—Before the Court of Sessions, Palakkad which was dealing with sessions case 86/1999 involving the offence under Sections 56 and 57-A(iii) of the Abkari Act, the present petitioner who was the 4th accused made a plea for discharge u/s 227 of the Cr.P.C. He contended that according to the case of the complainant the offence was committed only by accused Nos. 1 to 3 and that the petitioner's name was mentioned only as the owner of the vehicle and also in his capacity as brother of the first accused.

2. The learned counsel for the petitioner submits that neither the relationship with the first accused nor the fact that he is the owner of the vehicle in which the contraband was transported would cast any legal liability or culpability on him and that in the circumstances the learned Sessions Judge was bound to grant the discharge sought for.

3. I have heard the learned counsel for the petitioner. According to him the owner of the vehicle has some liability in the matter of confiscation of vehicle used for illegal transport of liquor and hence the trial as a co-accused will be fully justified. It is also pointed out that u/s 64 of the Abkari Act that there is

4. There is no dispute on the fact that only offences under Sections 56 and 57-A(1)(iii) of the Abkari Act were alleged in the case. Section 56 reads as follows.

a) fails to produce such licence or permit on the demand of any Abkari Officer or of any other officer duly empowered to make such demand; or

c) x x x x x x x x x x x x x x x x x d) permits drunkenness, riot or gaining in any place in which any liquor or intoxicating drug is sold or manufactured; or

shall on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

6. Section 57-A(1)(iii) of the Act reads as follows :-

XXX XXX XXX XXX XXXX XXXX

7. There is no case for the complainant that the 4th accused has mixed or permitted mixing of any substance in the liquor carried by accused Nos. 1 to 3. In fact the 4th accused was not in the vehicle at all at the time when the seizure took place. Thus Section 57-A(1)(iii) also cannot be applied against the accused.

8. It is true that there is a presumption u/s 64 of the Abkari Act which reads as follows :

In prosecutions under Sections 5, 55-B, 56-A, 57, 58, 58-A and 58-B it shall be presumed until the contrary is proved, that the accused person has committed an offence under that section in respect of any liquor or intoxicating drug, or any still, utensil, implement or apparatus whatsoever for the manufacture of liquor other than toddy or of any intoxicating drug, or any such materials as are ordinarily used in the manufacture of liquor or of any intoxicating drug, of the possession of which he is unable to account satisfactorily;

and the holder of a licence or permit under this Act shall be punishable, as well as the actual offender, for any offence committed by any person in his employ and acting on his behalf under Sections 8 or 55 or 58-B or 56 or 56-A or 57 or 58-A or 58-B as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence.

9. The presumption is against the accused with regard to the possession of which he is unable to account satisfactorily. In the instant case there is no case for the complainant that the accused was in possession of any intoxicating liquor. The second limb also cannot be applied to the petitioner in so far as there is no case that he was holding a licence or permit under the Abkari Act or that accused Nos. 2 and 3 were his employees or acting on his behalf. It follows that Section 64 of the Act also cannot apply against the petitioner.

10. The 4th accused was implicated in the case only in his capacity as owner of the vehicle not since he is the brother of the first accused. The Abkari Act does not contain any provision, whereby criminal liability is cast on the owner of the vehicle. It is another matter whether his vehicle is liable to be confiscated under the relevant provisions of the Abkari Act. As long as there is no allegation that the 4th accused was involved directly or indirectly in the transport of contraband liquor and in the absence of any specific provision in the Abkari Act which casts a liability on the owner of the vehicle for the offences committed or using that vehicle, the contention of the petitioner deserves to be accepted.

11. The revision, in the circumstances, is allowed and the 4th accused is discharged. The case will proceed against the other three accused.