
(2004) 03 KL CK 0012
In the High Court Of Kerala
Case No : Criminal M.C. No. 8540 of 2002

Lizy Kurian

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 31-03-2004

Acts Referred:

Kerala Abkari Act, 1077 — Section 55(a)

Citation : (2004) 1 KLJ 877 : (2004) 3 KLT 442 : (2005) 1 RCR(Criminal) 12

Hon'ble Judges : J.B. Koshy, J

Bench : Single Bench

Advocate : Nireesh Mathew and P.G. Jacob, for the Appellant; Sujith Mathew Jose (P.P.), for the Respondent

Judgement

J.B. Koshy, J.—Petitioner is the second accused in of 1986 of Excise Range Office, Kottayam. There were two accused in the said case. The offence alleged against the petitioner and the first accused is u/s 55(a) of the Abkari Act the prosecution case is that on 31-12-1986 at 4.30 p.m. CWs 1 and 2, the preventive officers of Excise Range, Kottayam on getting information conducted search in a shed situated in Kanjavu Kavala at Tottakkadu, Puthuppally on the basis of a search memo and at that time the accused were in unauthorised possession of ten liters of toddy in plastic can, 850 ml. of 3 bottles and a glass. Annexure A is the charge sheet. He notice was served on the petitioner. She was not arrested. But, her case was split up and refiled. The first accused then faced trial and he was acquitted by Annexure B judgment. The only allegation against the petitioner is the confession of the first accused that the toddy was entrusted to him by the petitioner. Petitioner was implicated as the second accused in the above case only on the basis of the confession of the first accused. As held by this Court and by the Hon''ble Supreme Court, confession of a co-accused cannot be taken as a substantive piece of evidence Admittedly, the petitioner was not found in possession of any contraband artic (sic) Even the prosecution witnesses have no case that the petitioner was present the time of occurrence of the case. Hence the only available evidence on (sic) prosecution, i.e., the alleged confession of

the co-accused is not sufficient (sic). convict the petitioner. In paragraph 15 of Annexure B judgment while acquitting the first accused it is observed as follows:

A2 is the contractor. PW2 would depose that on questioning, A1 confessed that the toddy was entrusted to him by A2 and that was why A2 was implicated. No explanation was offered by the prosecution as to why A2 was not arrested. That also would reveal that there is suspicion as to the prosecution evidence...

Apart from the alleged confession of the co-accused who was acquitted as prosecution case was not proved, there is no other evidence against the petitioner. There is no other allegation against the petitioner. In these set (sic) facts even if the petitioner face the trial, the case will end only in acquitti (sic) There is no purpose in proceeding with the case on the basis of Annexure (sic)-judgment. Any proceedings in C.C. No. 421 of 2002 before the Judic (sic) Magistrate of the first Class-I, Kottayam will amount to abuse of the proa (sic) of law. Even though normally, merely because one accused was acquitted other accused need not be acquitted, on the fact of this case, there is no iota (sic) evidence at all against the petitioner except the admission of co-accused (sic) was acquitted and on the basis of Annexure B judgment which was become final, there is no material in this case against the petitioner on the face (sic) Annexure A charge against the petitioner on the face of Annexure A chai (sic) sheet. Hence, I quash Annexure A charge sheet and all proceedings against i (sic) petitioner in C.C. No. 421 of 2002 on the file of the Judicial Magistrate of i (sic) first class-I, Kottayam.