
(2014) 10 KL CK 0118
In the High Court Of Kerala
Case No : Crl. Rev. Pet. No. 1196 of 2014

Logesh

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 17-10-2014

Acts Referred:

Citation : (2014) 10 KL CK 0118

Hon'ble Judges : K. Ramakrishnan, J

Bench : Single Bench

Advocate : N. Manoj Kumar and Jayasree Manoj, Advocate for the Appellant;
Bindu Gopinath, Public Prosecutor, Advocate for the Respondent

Judgement

K. Ramakrishnan, J.—This is a revision fled by the third accused in S.C. No. 96/2011 against the order dismissing the discharge petition filed by the revision petitioner as Crl. M.P. No. 1233/2013.

2. The case of the prosecution in nutshell was that on 19.07.2009, at about 8.30 a.m., accused numbers 1 and 2 were found transporting 17 cans of 35 litres each containing spirit in Indica car with No. KL-03-M-639 as arranged by 3rd accused and owned by the 4th accused and found transporting the same through Kalmandapam-Manali By Pass road in Palakkad No-III Village in violations of the provisions of Abkari Act and thereby, they have committed the offence punishable under Section 55(a) of Abkari Act.

3. On appearance, the petitioner filed Crl. M.P. No. 1233/13 for discharge. The case of the petitioner in the petition was that, he was undergoing treatment as in-patient in General Hospital, Srirangapattanam, Karnataka from 09.07.09 to 30.07.09 due to giddiness and there is no possibility for his entrustment of the spirit as alleged. Further, his name was not mentioned in the First Information Report and also no materials have been collected for this purpose to connect him with the commission of the offence. So, he prayed for discharge.

4. After hearing the Counsel for the defence and the Additional Public Prosecutor

of that court, the learned Additional Sessions Judge, No-III, Palakkad, by the impugned order, dismissed the application, legality of which is being challenged by the petitioner by filing this petition.

5. Heard the Counsel for the revision petitioner and the learned Public Prosecutor.

6. The Counsel for the revision petitioner submitted that he was undergoing treatment at that time and there is no possibility for entrusting the vehicle or entrusting the article as claimed. Further, there is no material before the court below to connect the petitioner regarding this aspect as he is a man from Karnataka and the offence was detected in Kerala. Further, the lower court has not mentioned the materials which are available for the court below to form an opinion regarding the involvement of the petitioner. So, according to the learned Counsel, the order suffers on account of this infirmity and the same is liable to be set aside and the revision petitioner is entitled to get discharge.

7. On the other hand, the Public Prosecutor argued that, it was on the basis of the confession statement given by the co-accused that his involvement has been satisfied by the investigating officer and further, the conduct of the revision petitioner will go to show that he is having abkari cases in other states also and he is dealing with spirit and other articles.

8. It is true that only if the court is satisfied that there is prima facie material to proceed against to frame charge and the allegations made are not groundless, then only court can proceed to frame charge. There is no dispute regarding the propositions laid down in the decisions reported in [2010 (1) KLT SN 64 (C. No. 79) SC] GHCL Employees Stock Option Trust Vs. India Infoline Ltd., G.H.C.L. Employees Stock Option Trust Vs. India Infoline Ltd. regarding the principles of allowing the application for discharge. In all those cases also, it was observed that court need not consider the genuineness of the allegations made at the time when it has decided to proceed frame charge against the accused. It is also not necessary to consider the question as to whether those allegations are sufficient to lead for a conviction as well.

9. Further, the Three Bench decision of the Honourable Supreme Court reported in Sheoraj Singh Ahlawat and Others Vs. State of U.P. and Another, , the Supreme Court has held that magistrate has, on the basis of material on record, only to see whether there is ground to presume that the accused had committed the offence and even strong suspicion about existence of fact constituting offence is sufficient to refuse discharge. In this case, on going through the case diary file, it is seen that it is on the basis of the statement given by the co-accused that enquiry has been conducted by the investigating officer and coming to know that he had involved in several abkari cases in Tamil Nadu, Karnataka and Andhra Pradesh. They were satisfied that it was as entrusted by the third accused that accused numbers 1 and 2 have transported spirit to Kerala. Whether that part of the evidence is sufficient to enter for conviction, is a matter for the court to decide after trial and not a question to be considered at the time

when it has decided to frame charge. Further, on going through the impugned order, it is seen that court has gone through the records available and the allegations made in the final report produced and on that basis, formed an opinion that the allegations are sufficient to come to a conclusion regarding the involvement of the third accused in the commission of the crime for the purpose of framing charge. That is the only thing what is required to be considered by the court below at that stage and on that basis, the court below had formed an opinion that the allegations are not groundless to allow the benefit of discharge to the petitioner and rightly dismissed application. So, there is no illegality committed by the court below to proceed against the accused and decided to frame charge and dismissing the application to discharge and that does not call for any interference at the hands of this court. So, the revision is without any merit and the same is liable to be dismissed.

In the result, the revision petition is dismissed. CrI. M.A. No. 3573/14 is dismissed and interim order of stay granted is vacated. If the petitioner applies for exemption, then, the court can consider that application and appropriate orders can be passed by that court in accordance with law.

Office is directed to communicate this order to the concerned court immediately.