
(2012) 10 KL CK 0053

In the High Court Of Kerala

Case No : Criminal Rev. Petition No. 1546 of 2003

M. Madhavi

APPELLANT

Vs

The Excise Circle Inspector, Hosdurg and State of Kerala

RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Kerala Abkari Act, 1077 — Section 55(a)

Citation : (2012) 10 KL CK 0053

Hon'ble Judges : N.K. Balakrishnan, J

Bench : Single Bench

Advocate : Sreeprakash K. Nair, for the Appellant; Jasmine V.H., Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Justice N.K. Balakrishnan

1. This revision petitioner was concurrently held guilty of the offence punishable under Sec. 55(a) of Abkari Act and she was sentenced to undergo S.I. for six months and to pay Rs. 1,000/- as fine and in default to undergo S.I. for one month. The case was detected on 17.10.1996 at about 5 p.m. PW1, who was the preventive officer attached to the Excise Enforcement Special Squad and his party were on patrol duty. The accused was seen carrying a bag. She was intercepted and the bag was examined. It contained 12 bottles of 180 ml each of liquid. The liquid was identified to be liquor to be sold in Karnataka only as could be seen from the label and sticker found on those bottles. Thus she was arrested. The contraband was seized as per Ext.P1 mahazar. After reaching his office, crime and occurrence report was prepared. On the next day, the properties and the records were entrusted to the Excise Inspector, Hosdurg Range from where the occurrence report was prepared as Ext.P3. Ext.P2 is the report prepared by PW1 for registering the crime. When the two samples were sent for chemical examination, it was found to contain 41.60 and 41.94% by volume of ethyl alcohol. It was so certified as per Ext.P4. The trial court accepted

the evidence and found the petitioner guilty and convicted as stated above. The appellate court confirmed the conviction and sentence.

2. Learned counsel for the petitioner submits that there is discrepancy in the evidence given by PW1 and PW3 regarding the seizure of the contraband and also regarding the sampling alleged to have done. The copy of the requisition of the forwarding note is not seen filed or marked. It is also submitted that the evidence given by PW1 and PW3 would show that no labels containing the signatures of the accused or witnesses were affixed on the contraband items or on the sample bottles. Hence, the learned counsel submits that the conviction is unsustainable. Learned counsel for the petitioner further submits that the evidence given by PW1 and PW3 may show that the bag containing 12 bottles of 180ml each was seized by PW1 and PW3. Though it was stated that two bottles were opened and those two bottles were taken as sample, the property list as per which the properties were produced before court has not been produced. That, according to the learned counsel, is necessary since there is no acceptable evidence as to whether there was proper sampling. PW2 has stated that the properties were entrusted to him on 18.10.1996 but the properties were produced before the court only on 25.10.1996. There is no case for PW2 also that the contraband articles were affixed with seal and signature of the accused. Therefore, the possibility of tampering of the material objects cannot be ruled out, the learned counsel submits. Learned counsel also submits that the petitioner was aged 55 years in the year 1996 and so, she must be aged 72 years now. It is also submitted that the evidence adduced by the prosecution is not sufficient to confirm the conviction. Since, no label containing signature/thump impression of the accused was affixed on any of the sample bottles, it is difficult to hold that the sample sent for chemical examination was the sample taken from out of the liquor bottles allegedly carried by the accused. It is also not known, what was the seal that was used to affix on the sample bottle and all other bottles. Since the forwarding note is not produced or marked, it is not certain whether it was the very same seal that was affixed on the sample bottles. No explanation has also been offered regarding the delay in production of the properties and as to who was the officer in possession of the properties till it was produced before the court. Considering all the aspects, I find that the conviction and sentence cannot be sustained.

In the result, this Crl.R.P. is allowed. The conviction and sentence passed against the petitioner are set aside. Petitioner is acquitted of the offence and she is set at liberty. The bail bond executed by her shall stand cancelled.