
(2020) 12 KL CK 0120
In the High Court Of Kerala
Case No : Criminal Appeal No. 1207 Of 2006

Mohammed Kunju @ Gopi Pillai	Vs	APPELLANT
State Of Kerala		RESPONDENT

Date of Decision : 08-12-2020

Acts Referred:

Abkari Act, — Section 55(a), 55(i)

Citation : (2020) 12 KL CK 0120

Hon'ble Judges : B. Sudheendra Kumar, J

Bench : Single Bench

Advocate : S. Abdul Razzak, C.S. Sumesh, V. Sreeja

Final Decision : Allowed

Judgement

1. The appellant was convicted and sentenced by the court below under Sections 55(a) and (i) of the Abkari Act.
2. The prosecution allegation is that on 15.07.2001 at about 3.50 p.m., the appellant was found in possession of 1.350 litres of arrack for the purpose of sale in contravention of the provisions of the Abkari Act.
3. Since there is no representation for the appellant, this Court has appointed Advocate Sri.C.S.Sumesh as Amicus Curiae to argue the case for the appellant.
4. Heard the learned Amicus Curiae and the learned Public Prosecutor.
5. The learned Amicus Curiae has argued that since no forwarding note was marked and proved in this case, the appellant is entitled to be acquitted.
6. It appears that no forwarding note was marked and proved in this case.
7. In Sasidharan v. State of Kerala [2007 (1) KLT 720], the Court observed thus:
â??Without the link evidence of actual sampling by the concerned clerk of the

court by drawing sample from the can and sending the same in a sealed packet to the Chemical Examiner with a specimen seal sent separately for tamper proof despatch, the Prosecution cannot be held to have brought home the offence against the appellant.â??

8. In *Ravi v. State of Kerala* [2011 (3) KLT 353], the Division Bench of this Court held that the prosecution in a case under the Abkari Act could succeed only if it is shown that the contraband liquor which was allegedly seized from the accused ultimately reached the hands of the chemical examiner by change of hands in a tamper- proof condition.

9. Since no forwarding note was marked and proved in this case, the prosecution could not establish the tamper -proof despatch of the sample to the laboratory. In the said circumstances, there is no satisfactory link evidence to show that it was the same sample which was drawn from the contraband seized from the appellant which eventually reached the hands of the Chemical Examiner by change of hands in a tamper-proof condition.

Therefore, there is no link evidence connecting the appellant with the sample analysed in the laboratory. Consequently, the conviction and sentence passed by the court below on the basis of Ext.P5 certificate of chemical analysis, cannot be sustained.

In the result, this appeal stands allowed setting aside the conviction and sentence passed by the court below and the appellant stands acquitted. The bail bond of the appellant stands discharged.

Needless to state that if the appellant had already deposited any amount before the court pursuant to the direction of this Court, the appellant is entitled to reimbursement of the said amount from the court concerned.