

(2010) 11 KL CK 0117
In the High Court Of Kerala
Case No : Criminal M.C. No. 1670 of 2006

Nikesh

APPELLANT

Vs

Sub Inspector of Police

RESPONDENT

Date of Decision : 09-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Kerala Abkari Act, 1077 — Section 15C

Citation : (2010) 4 KLT 749

Hon'ble Judges : Sasidharan Nambiar, J

Bench : Single Bench

Advocate : B.H. Mansoor and P.M. Haris Poothullil, for the Appellant; I.V. Pramod, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Sasidharan Nambiar, J.—Whether consumption of liquor in a lodging room would constitute an offence u/s 15C of Abkari Act is the question.

2. Judicial First Class Magistrate Court, Chavakkad took cognizance for the offence u/s 15C of Kerala Abkari Act against accused Nos. 1 to 7, on Annexure-II final report submitted by Sub Inspector of Police Vadanappally. The prosecution case is that on 6.6.2004 at about 3.10 a.m. Petitioners were found consuming liquor in Room No. 14 of "Vellamkanni Matha" lodge. It is alleged that they thereby committed an offence u/s 15C of Kerala Abkari Act. Petition is filed u/s 482 of Code of Criminal Procedure to quash the cognizance taken contending that the offence is not attracted.

3. Learned Counsel appearing for the Petitioner and the learned Public Prosecutor were heard.

4. Facts are not disputed. Petitioners were found consuming liquor in Room No. 14 of a residential lodge by name "Vellamkanni Matha" lodge, at about 3.10 a.m. The question is whether consumption of liquor in a room of a lodging house

would attract an offence u/s 15C of the Act.

5. Section 15C of Kerala Abkari Act reads thus:

15C. Consumption of liquor in public places.- No person shall consume liquor in any public place unless consumption of liquor in any such place is permitted under a licence granted by the Commissioner.

Explanation I: For the purpose of this section, "Public place" means any street, Court, Police Station [or other public office or any club] or any place of public amusement or resort or on board any passenger boat or vessel or any public passenger vehicle, or a dining or refreshment room in a restaurant, hotel, rest-house, travellers' bungalow or tourists' bungalow where different individuals or groups of persons consume food, but shall not include any private residential room.

Explanation II: For the purpose of Explanation I, "public passenger vehicle" means a vehicle used for carrying passengers for hire or reward other than a vehicle which carries passengers for hire or reward under a contract, express or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum.

To attract an offence u/s 15C, Petitioners should have consumed liquor in any public place unless consumption of liquor in such public place is permitted under a licence granted by the Commissioner. In view of Explanation one, public place means any street, Court, Police Station or other public office or any club or any place of public amusement or resort or on board any passenger boat or vessel or any public passenger vehicle, or a dining or refreshment room in a restaurant, hotel, rest-house, travellers bungalow or tourists' bungalow where different individuals or groups of persons consume food, would be a public place. Hence as is clear from the first Explanation such public place shall not include any private residential room.

6. The specific case is that Petitioners were found consuming liquor in Room No. 14 of a lodging house. That room is admittedly a private residential room. The liquor was not consumed in the dining or refreshment room in that lodge. Hence the consumption was not from a public place. If that be so, Section 15C is not attracted in the case at all. Consumption of liquor in a private residential room, will not be an offence u/s 15C in view of Explanation I of Section 15C. Therefore continuation of the proceedings is only an abuse of process of the court.

Petition is allowed. S.T. No. 3382 of 2004 on the file of the Judicial First Class Magistrate Court, Chavakkad is quashed.