

(2001) 06 KL CK 0069
In the High Court Of Kerala
Case No : Criminal P. No. 196 of 2000

Pottekkadu Suresh and Another

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 15-06-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 397
Kerala Abkari Act, 1077 — Section 55
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 22
Penal Code, 1860 (IPC) — Section 277, 366

Citation : (2001) CriLJ 3791

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

Bench : Single Bench

Advocate : C.C. Thomas, for the Appellant; Gracious Kuriakose, Public Prosecutor, for the Respondent

Judgement

J.B. Koshy, J.—Petitioners are accused Nos. 1 and 2 in Sessions Case No. 72/99 on the file of the Special Judge (NDPS Act. cases), Vadakara. The Sub-Inspector of Police, Tirur conducted a raid on 6-1-1997 in toddy shop with Licence No. 14/96-97 and arrested three persons from the toddy shop. Petitioners were arrested from the room where toddy was stored. Allegation was that based on the assumption that they were employees of the shop a case was registered u/s 55(a) of the Abkari Act and Sections. 336 and 272 of the Indian Penal Code and Crime No. 8/87 was registered. The chemical analysis report received on 11-5-1999 disclosed that toddy contained diazepam. The licensee of the toddy shop is arrayed as fourth accused and a final charge u/s 22 of the Narcotic Drugs and Psychotropic Substances Act was filed against the four accused and all the four accused were released on bail. According to the petitioners, they are not employees of the above shop and they have no connection with the toddy shop. They also contended that there is defect in the chemical analysis report. Petitioners 1 and 2 filed a petition as CrI. M.P. No, 417/99 before the Special Judge (NDPS Act cases), Vadakara praying for a discharge on the ground that

there is no prima facie evidence to connect the petitioners with the offence. That was rejected. In Crl. R.P. No. 998/99, this Court directed the learned Special Judge to pass detailed order after hearing the petitioners and the prosecutor regarding the scope for framing charge against all or any of the accused. Finally, Annexure "D" order was passed.

2. Mainly two contentions are raised before this Court. One to that petitioners were not employees of the shop and there is no prima facie case against the petitioners Annexure "E" is the certificate issued by the Welfare Fund Inspector, Malappuram wherein it is stated that during the period 1-4-1998 to 31-3-1997 only one person was registered in the Welfare Fund. Merely because only one person was registered in the Welfare Fund it cannot be stated that no other persons were working in that shop and it is difficult to believe why only with one person the above shop was functioning. They were allegedly arrested from the place where toddy was stored. Whether the chemical analysis report can be accepted; whether petitioners are employees etc. can be considered only after evidence is over.

3. The Supreme Court in *State of M.P. Vs. S.B. Johari and Others*, considered the scope of Sections. 397, 227 and 228 of the Code of Criminal Procedure. It was held that the Court at the stage of Sections. 227 and 228 is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. Only prima facie case is to be looked into. The charge can be quashed if the evidence which the prosecutor proposes to prove the guilt of the accused, even if fully accepted, it cannot show that accused committed that particular offence. High Court cannot appreciate and weigh the materials on record to find out whether finally accused will be convicted or not. Trial Court also is not required to marshal the materials on record of the case as he would do on the conclusion of the case. Court is bound to peruse the records for the limited purpose of finding out whether there is a prima facie material to charge-sheet the accused and if the allegations taken at the face value discloses the existence of the ingredients constituting the alleged offence.

4. The Apex Court in *Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others*, considered the scope of Section 227 and opined that Court is not expected to make a roving enquiry into the pros and cons of the issue and weigh the evidence as if a trial is conducted. Accused can be discharged only when there is no prima facie ground to sustain the charge. What is required is the sufficiency of ground for proceeding against the accused and not whether materials on record are sufficient for conviction. In this case, after hearing the petitioners also Annexure "D" order was passed by the Special Court. The Court in paragraph 7 observed as follows :

7. C.W. 7 is Kaduvathil Sasi. His statement is that the toddy shop is functioning in the building on his late uncle Kaduvathil Kunhan. The shop was being conducted by Damodaran s/o Kunhan. He heard that on 6-1-1997 toddy was

seized by S.I, and the workers Vasu, Suresh and Chandrasekharan were arrested knowing that he had reached the toddy shop. Of course, that evidence is not sufficient to find that the three persons were arrested in his presence but he only heard the information as to the arrest. From his evidence it looks that Vasu, Suresh and Chandrasekharan are the employees of the shop. The S.I. had questioned Kaduvathil Karthiani the wife of Kunhan. She has stated that the toddy shop in her residential compound was being conducted by Damodaran, and then Kolapurath Suresh, Mundaparambil Chandrasekharan and Pottakkatil Suresh were the employees of the shop. While they were conducting the shop, on 6-1-1997, the Tirur S.I. and party searched the shop and arrested them. Her statement is sufficient to find at this stage that the three persons arrested from the shop were the employees. Of course, the witness didn't see the arrest. But. from the material available it is clear that after Kunhan his son Damodaran has been conducting the shop. The shop is on the residential premises of Kunhan. Of course, Kunhan is no more. Since, after Kunhan his son Damodaran is managing the shop, the wife of Kunhan and the mother of Damodaran will certainly be aware who would be the employees of the shop. Her statement is that A1 and A2 were the employees of the shop at the time of arrest is sufficient to prove the involvement of those persons in the commission of the crime.

5. On the basis of the documents and other evidence produced, whether the accused are employees and whether the identification of diazepam and the test conducted were proper etc. have to be considered by the Court after conclusion of the trial. At present, the question is whether from the materials produced is there any prima facie case and if the case of the prosecution is accepted, whether accused can be charge-sheeted etc. need be looked into. For framing a charge, there is no legal requirement to pass an order specifying the reasons why the charge is framed. Reasons are required to be recorded only in the case of discharge. Here, the accused were not discharged. (See Kanti Bhadra Shah and Another Vs. The State of West Bengal, . However, in this case, on the basis of the directions of this Court in Cri. R.P. No. 996/99, a speaking order (Annexure "D") was passed wherein the Special Court has recorded the reasons why the accused cannot be discharged at the initial stage and also holding that it cannot be said that there is no material on record to proceed against the petitioners and charges can be framed.

6. I see no ground to set aside Annexure "D" order. Therefore, the Cri. R.P. is disposed of without prejudice to the right of the petitioners to take up their defence in the Criminal Court.