

(2018) 02 KL CK 0070
In the High Court Of Kerala
Case No : 8977 of 2017

PRASANAN

APPELLANT

Vs

STATE OF KERALA

RESPONDENT

Date of Decision : 08-02-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) -

Kerala Abkari Act, 1967, Section 8(2)

Citation : (2018) 02 KL CK 0070

Hon'ble Judges : P.Ubaid

Bench : Single Bench

Advocate : PRAVEEN K. JOY, SREEJA V

Final Decision : Allowed

Judgement

1. The petitioner herein is the original third accused in Crime No. 76 of 2003 of the Punalur Police Station, involving the offence under Section

8(2) of the Kerala Abkari Act (hereinafter referred to as "the Act"). According to the prosecution, he was the licensee of the toddy shop No. "T.S.

No. 18" at Kalayanadu Junction of Valakode Village, and the prosecution allegation is that at about 6.30 p.m. on 07.02.2003, the accused Nos. 1

and 2 in the crime were found possessing two litres of arrack for illicit sale at the toddy shop, as the employees of the third accused. After

investigation, the Police submitted final report before the Judicial First Class Magistrate Court-III, Punalur against three accused, including the

licensee, under Section 8(2) of the Act. Pending the committal proceedings, the original second accused absconded. In such a situation, the

learned Magistrate committed the case against the original accused Nos. 1 and 3 to the Court of Session. The case was filed as S.C.No. 1051 of

2004 in the Court of Session, and it came up for trial before the learned Additional Sessions Judge for the trial of Abkari Cases, Kottarakkara.

2. The original first accused faced trial before the trial court, and the case against the original third accused (the petitioner herein) was split up when

he remained consistently absent during the trial process. The prosecution examined three witnesses in the trial court in S.C.No. 1051 of 2004.

3. On an appreciation of the evidence, and on a consideration of the legal issues involved, the learned trial Judge acquitted the first accused by

judgment dated 24.10.2016, in S.C.No. 1051 of 2004. The case against the petitioner (the original third accused) was later transferred to the

register of long pending cases as L.P. No. 41 of 2016. Warrant of arrest, being periodically issued from the court, is now pending against the

petitioner. He seeks orders from this Court under Section 482 of Cr.P.C. quashing the prosecution as against him on the ground that there is no

scope to proceed with the prosecution when the very substratum of the prosecution case stands totally lost by the acquittal of the first accused, and

that continuance of the proceedings against him, in the present circumstances, will be a sheer waste of time.

4. Annexure-1 is the copy of the judgment of the trial court in S.C.No. 1051 of 2004. A perusal of the judgment shows that the trial court

acquitted the first accused on the ground of some legal infirmities. The petitioner is being prosecuted as the third accused on the allegation that he is

the licensee of the toddy shop from where arrack was seized by the Police. In fact, the prosecution has not produced any document to show that

the petitioner is in fact the licensee of the said toddy shop. On this ground itself, the prosecution as against him would collapse. The judgment of the

trial court shows that this is a case where the properties were produced in court after 21 days. There is no evidence regarding the seal affixed on

the properties including the sample, and the prosecution has not produced the copy of the forwarding note in court. These are the infirmities

noticed by the court, and these are the legal grounds on which the first accused obtained acquittal.

5. As regards the forwarding note, and also the delay in producing the properties in court, the trial court found thus in paragraphs 14 and 15 of the

Annexure-1 judgment:

14. Moreover, no forwarding note or copy is also seen produced and marked in this case. In *Gopalan V. State of Kerala* reported in 2016 (3)

KLT SN 24 (C. No.16) the Hon''ble High Court of Kerala held that where no forwarding note was marked before the court, it can only be

considered that the forwarding note was not prepared and produced before the court and that since the forwarding note is not available the

prosecution could not establish the link evidence connecting the accused with the contraband seized and the sample analyzed in the laboratory and

that in such circumstance the accused is entitled to the benefit of doubt.

15. It is also pertinent to note here that from the property list, it is clearly seen that though the contraband was seized on 7-2-2003, the MOs and

sample are seen produced before court only on 28-2- 2003, ie; after a period of about 21 days from the date of the alleged seizure and that too

without any explanation for the delay. In the rulings in *Ravi Vs State of Kerala* reported in 2011(3) KLT-353 and *Appukuttan Vs. State of Kerala*

reported in 2013 (2) KLT, S.N-109 (Case No.138), the Hon''ble High Court of Kerala held that the production of property before court without

unreasonable delay is a necessary requirement of law and that there should be explanation for the delay when there is delayed production of the

property. In this case also prosecution failed to explain the unreasonable delay of 21 days in producing the MOs before court and also failed to

explain as to in whose custody the MOs were kept till the same were produced before court. This is very much fatal to the prosecution case. In the

ruling in *Narayani Vs Excise Inspector* reported in 2002 (3) KLT 725, the Hon''ble High Court of Kerala held that in the absence of any evidence

to prove that the residue and sample were kept in the proper custody till the date of producing the same before court, the chance of tampering with

the sample taken and the residue seized cannot be ruled out. So also in *Ramankutty Vs Excise Inspector* reported in 2013 (3) KHC 308, the

Hon''ble High Court held that the unexplained delay of a single day is fatal to the prosecution. Hence, I am of the view that the contention of the

learned defence counsel that the sample was tampered with cannot also be totally disregarded.

6. On an appreciation of the materials, the trial court found that there is absolutely nothing to identify the properties produced in court as those

seized from the possession of the accused Nos. 1 and 2. As regards the allegation that the accused Nos. 1 and 2 are the employees of the third

accused, the trial court found thus in paragraph 16 of the Annexure-1 judgment:

16. As already narrated above, the MOs were not produced and marked in this case. According to the prosecution, A1 was the employee of A3

who is the licensee of the above said toddy shop. But it is to be noted that no license was seized and produced in this case and no scrap of paper

is produced to prove that A1 was the employee of the above said toddy shop.

7. On the merits of the case, the trial court concluded in paragraph 17 of the Annexure-1 judgment that the prosecution has failed to prove the

arrest of the first accused, the genuineness of the samples forwarded to the laboratory, etc.. The properties in this case were produced in court

after 21 days. This unexplained and inordinate delay was also considered by the trial court.

8. On a perusal of the Annexure-1 judgment in favour of the first accused, I find that the very substratum of the prosecution case stands totally lost.

This is a case involving so many legal infirmities as discussed and found in the Annexure-1 judgment. There is no doubt that if the prosecution

proceeds against the petitioner, it will be a sheer waste of time. It is quite definite that the prosecution cannot in any manner improve the case

against the petitioner, who is the original third accused. In the absence of anything to show that he is the licensee of the toddy shop in question,

there is no question of he being found guilty or convicted. I find that the prosecution now pending against him is liable to be quashed.

In the result, this petition is allowed. The prosecution against the petitioner herein as the original third accused in Crime No. 76 of 2003 of the

Punalur Police Station, now pending as L.P. No. 41 of 2016 before the Judicial First Class Magistrate Court-III, Punalur, will stand quashed

under Section 482 Cr.P.C., and the petitioner will stand released from the prosecution.