
(2004) 03 KL CK 0025
In the High Court Of Kerala
Case No : Criminal M.C. No. 9383 of 2002

Rajan	Vs	APPELLANT
The Excise Inspector and Another		RESPONDENT

Date of Decision : 12-03-2004

Acts Referred:

Kerala Abkari Act, 1077 — Section 55(a), 64A

Citation : (2004) CriLJ 2991 : (2004) 1 KLJ 666 : (2004) 2 KLT 430

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

Bench : Single Bench

Advocate : M. Ramesh Chander and K.A. Sangeetha, for the Appellant; Sujith Mathew Jose, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—Petitioner here in is the second accused in C.P. No. 173 of 2002. on the file of the Judicial First Class Magistrate Court, Kasaragod. He along with another accused was charge sheeted for offence punishable under Sections 55(a) and 64A of the Abkari Act. The allegation as seen from Annexure A2 charge sheet is that on 6.8.2000 the first accused was transporting packets of arrack from Karnataka State. The total number of packets transporting by the first accused was found 200. The petitioner was arrayed as second accused on the ground that petitioner is the registered owner of the Chetak scooter, bearing No. KL-14/2650, According to the petitioner, as can be seen from Annexure A1, he became the registered owner only after the alleged offence. Whatever may be that, his further contention is that charge against him was framed u/s 64A. Section 64A reads as follows:

64A. Penalty for allowing land, building, room, etc. for manufacturing, sale or storing for sale of liquor or intoxicating drug:- Notwithstanding anything contained in this Act, or in any other law for the time being in force, any owner or occupier or person having control or, any land, building, room, space or enclosure, permits any person to use such land, building, room, space or

enclosure for manufacture, sale or storing for sale of liquor or intoxicating drug in contravention of this Act or of any rule or order made thereunder or of any licence or permit obtained under this Act shall be punishable with fine which shall not be less than twenty-five thousand rupees unless he proves to the satisfaction of the court that all due and reasonable precautions were taken by him to prevent such use.

A plain reading of Section 64A would show that it will attract only if any land, building, room", space or enclosure owned by a person is used for manufacture, sale or storing for sale of liquor or intoxicating drug. Section 64A is not attracted merely because accused is the registered owner of the vehicle. The word "place" is defined u/s 3(21) of the Act as follows:

(21) Place:- "Place" includes also a house, building, shop (tent, booth, raft. vehicle and vessel:

But, place is not mentioned in the section. Of course ,first accused was charged for offence u/s 55(a) for transporting or importing intoxicating liquor. But Section 64A is applicable only if land or space or enclosure is allowed to be used for manufacturing, sale or storing for sale of liquor and not for transporting. The prosecution has no case that petitioner was travelling in the vehicle at that time or abetting the above offence. The only allegation is that he was the registered owner of the vehicle. There is no other allegation, against him in the F.I.R. He was not even charge sheeted for abetting the offence.

In the above circumstances, charges u/s 64A framed on second accused is not maintainable. Therefore, Annexure A2 charge sheet u/s 64A against the second accused in C.P. No. 173 of 2002 is quashed. The Magistrate Court will be free to proceed with charges against accused No. 1 according to law.

The Crl. M.C. is allowed.