

(1998) 11 KL CK 0016
In the High Court Of Kerala
Case No : O.P. No. 8281/98 B

Salam Haji

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 10-11-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 21, 226, 227
Kerala Abkari Act, 1077 — Section 55A, 64A, 67B
Kerala Forest Act, 1961 — Section 67A, 67B

Citation : (1998) 11 KL CK 0016

Hon'ble Judges : K.S. RadhaKRishnan, J

Bench : Single Bench

Advocate : George Poonthottam, for the Appellant; N. Raghu Raj, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Petitioner is the owner of a building No. 870A of Ward No. 1 of Neeleswaram Panchayat. The building was let out to one Saji Luckose on a monthly rental basis. Circle Inspector of Police, Neeleswaram conducted a search in the building on 28th September 1996 and unearthed 4340 litres of unauthorised spirit contained in barrels, and other utensils. A case was registered against Saji Luckose and Petitioner under Sections 55A and 64A of the Kerala Abkari Act. The charge levelled against the Petitioner was that Petitioner rented out the premises to Saji Luckose and that with the knowledge and consent of the Petitioner and Saji Luckose the building was used for the raid illegal activities, even after the expiry of the lease period, so as to make unlawful gain.

2. According to counsel for the Petitioner, the room was rented out on the basis of Ext. P-3 rent deed for a period of six months. However on expiry of the said period also Saji Luckose continued to be in possession of the building and vacated it only on 2nd September 1997. According to counsel, when the incident

happened, Petitioner had no control over the building. Therefore no charge will lie against the Petitioner. He has got a further case that Section 64A of the Act would not give any authority to the officer to include the owner of the building as an accused, merely because the building has been let out to a person. Counsel submitted that construction of a building and giving the said premises on rent to persons who are doing business and trade is the right of a citizen and the said right and the grant of lease cannot give rise to a cause of action for criminal prosecution. Any such action is violative of Articles 14, 19(1)(g) and 21 of the Constitution of India.

3. In order to establish his case, counsel relied on the decision of the Supreme Court in *Samatha Vs. State of A.P. and Others*, Counsel contended that since Petitioner has already let out the building and there is separation of ownership and possession, which created a right or interest on the enjoyment of the demised property on the lessee. Counsel therefore contended that Petitioner has no legal control over the building. Reliance was also placed on the decision of the Supreme Court in *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others*, and it was contended that while exercising powers under Articles 226 and 227 of the Constitution of India, this Court has got power to interfere with the proceedings initiated by the criminal Court, since the criminal proceedings u/s 64A have no legal validity.

4. In order to understand the contentions raised by counsel for the Petitioner, it is necessary to understand the scope of Section 64A of the Kerala Abkari Act. The said provision is extracted below for easy reference:

64A. Penalty for allowing land, building, room, etc., for manufacture, 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 of, 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.

Section 64A is attracted only if any owner, or occupier or person having control of 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 the Abkari Act or rules made thereunder or of any licence or permit obtained under the Act. Therefore only if permission is given by the owner or person in control of the building to use such premises for the manufacture, sale or storing for sale of liquor, Section 64A is attracted. If it is proved that such permission has been granted to use the premises for manufacture, or sale or for storing for sale of liquor, in contravention of the Act and the Rules made thereunder, that person shall be

punishable with fine which shall not be less than Rs. 25,000. However, it is open to the owner or the person in control of the premises to prove to the satisfaction of the Court that due and reasonable precautions were taken by him to prevent such use. A person can permit another person to use the building for the above mentioned purposes by various means, such as by written agreement, or on oral agreement, etc. There may be situations where landlord, even after having come to know that the premises has been used for the manufacture, sale or storing for sale of liquor or intoxicating drug, may keep silent in order to enable the other person to use the premises for illegal activities.

5. We have to understand the scope of Section 64A in the setting in which the said provision is placed. Trade in liquor has historically stood on a different footing from other trades. Restrictions which are not permissible with other trades are lawful and reasonable so far as the trade in liquor is concerned. That is why even prohibition of the trade in liquor is not only permissible but is also reasonable. Article 47 of the Constitution of India states that it is the duty of the State to raise the level of nutrition and the standard of living and to improve the public health, and also reminds the State to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. Supreme Court in various decisions held that restrictions imposed by a law providing for the prohibition of consumption or production of liquor cannot be challenged as violative of Article 19(1)(g) inasmuch as dealing in liquor cannot be regarded as a trade or business within the meaning of Article 19(1)(g).

6. In order to give effect to the real object and purpose of the Act, the rule-making authority has got jurisdiction to adopt various regulatory measures. Supreme Court in *Razakbhai Issakbhai Mansuri and Others Vs. State of Gujarat and Others*, held as follows:

So far as the intoxicating drinks are concerned, their evil effects are well established specially for the Indian society. This was why the framers of the Constitution considered it fit to include it in express terms in Article 47 while indicating the duty of the State to raise the standard of living and to improve the public health. It is, therefore, within the authority of the State to prohibit consumption of intoxicating liquor... In order that this policy may succeed, it is not sufficient to merely ban manufacture and consumption of alcoholic drinks. To render it really effective further measures became essential in order to defeat the illegal activities of the anti-social elements engaged in illicit manufacture and illegal distribution of the liquor in the market. It therefore became obligatory for the State to take all such steps as found necessary for implementing the prohibition policy, by not only placing the restrictions on the manufacture, sale and consumption of liquors but also by adopting such other regulatory measures essential to achieve the objective.

(emphasis supplied)

As is evident from the above mentioned principle laid down by the Supreme Court, State have got power to adopt various regulatory measures essential to achieve the objective, so that illegal activities of the anti-social elements engaged in illicit manufacture and illegal distribution of the liquor could be prevented. Legislation in modern State is actuated with some policy to curb some public evil. Legislature is primarily directed to make legislation based on past and present experience.

7. The rule-making authority might have come across several instances where buildings are being used for the manufacture, sale or for storing of liquor for sale or for sale of intoxicating drugs in contravention of the Act with the knowledge and connivance of the owners of the premises. Owner of the building is more concerned with the building than anybody else. If the building is used for illegal activities, it will be the primary concern of the owner or the person in control of the building rather than anybody else. The mere fact that building has been let out does not mean that the owner ceases to have any control over the building. If premises is used for illegal activities, it is always open to the owner to rare complaint before the authorities that the building is being used for illegal activities. Owner will also be cautious when the building is rented out to a person. No building can be rented out for an activity which is illegal and opposed to law. The necessity of the owner, or the person in control, of the building or a vehicle to take reasonable and necessary precaution against its use for illegal activities has been provided for in various statutes. We find such provisions in Section 67B of the Abkari Act, Sections 67A and 67B of the Kerala Forest Act, and also in the Narcotic and Psychotropic Substances Act. All the above mention provisions have got a purpose to achieve, and they stand on a different footing because of the nature of those legislations. Restrictions which are not permissible with other trades are lawful and reasonable with regard to various matters covered by the above mentioned legislations. Therefore I am not prepared to say that Section 64A imposes any unreasonable restriction or infringe the freedom on the persons like the Petitioner. Therefore Section 64A is not violative of Articles 14, 19(1)(g) and 21 of the Constitution of India.

8. It is pertinent to note that charges specifically say that illicit liquor has been stored in the Petitioner's premises with the knowledge and consent of the Petitioner. Even after the expiry of the period of lease, the said premises continued to be used for the said purpose by the Petitioner, and another person against whom case has been registered. Whether building is used with the permission of the Petitioner or not is a matter to be gone into by the criminal Court, and not by this Court. It is always open to the Petitioner to prove that he had taken all due care and reasonable precaution to prevent such use. I make it clear that I am not expressing any opinion with regard to the involvement or otherwise of the Petitioner. Those are all matters to be decided by the criminal Court. In this case I am only concerned with the validity of Section 64A of the Abkari Act, which I have found valid.

Writ Petition therefore lacks merits and the same if dismissed.