
(2007) 01 KL CK 0008
In the High Court Of Kerala
Case No : O.P. No. 12269 of 1999 (I)

Sasidharan K.K. and Others	Vs	APPELLANT
State of Kerala and Another		RESPONDENT

Date of Decision : 17-01-2007

Acts Referred:

Abkari Act, 1997 — Section 55, 56

Citation : (2008) 4 ILR (Ker) 61 : (2008) 1 KLJ 383

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : C.C. Thomas, for the Appellant; Noble Mathew, G.P., for the Respondent

Judgement

S. Siri Jagan, J.—The petitioners were licensees of toddy shop Nos. 117 to 177 of Ettumanoor excise range in Kottayam division for the year 1999 - 2000. The petitioners obtained Ext. P1 permit for transportation of toddy from Chittur to Ettumanoor. On 12-5-1999 a mini lorry containing the toddy transported by the petitioners was seized by the Excise Officers since the lorry contained toddy in excess of the quantity permitted by Ext. P1 permit. Crime No. 2/99 was registered against the petitioners under Sections 55(a) and 56(b) of the Abkari Act, 1997, as per Ext. P2 by the Excise Inspector, Tripunithura. A mahazar Ext. P3 was also prepared. The petitioners are challenging Ext. P2 occurrence report to the extent it includes an offence u/s 55(a) also. According to the petitioners, transportation of toddy in excess of permit, even if proved to be correct would only amount to violation of the permit conditions, which would not attract an offence u/s 55(a) of the Abkari Act and, therefore, Ext. P2 to the extent it includes an offence u/s 55(a) also is liable to be quashed.

2. The contention of the learned Government Pleader is that whether an offence u/s 55(a) is also attracted in such circumstances is a matter which the petitioners have to raise before the criminal court, before which the matter is pending. Therefore, the learned Government Pleader submits that petitioners

should be relegated to the criminal court to prove their case by adducing evidence in support of the same.

3. I have considered arguments on both sides in detail.

I find that this Court has repeatedly held that violation of a condition in the licence or rules by licensee will amount only to an offence u/s 56(b) of the Abkari Act and no offence would lie u/s 55 for that act. See the decisions of Mariamma and Anr. v. State of Kerala reported in 1998 (1) KLT 286 and Sabu Vs. State of Kerala, . In fact even the Supreme Court has now categorically held that even for excess percentage of alcohol in toddy would attract only an offence u/s 56(b).

4. The petitioners have produced before me the order of the Sessions court granting bail to the driver of the vehicle in which the petitioners were transporting toddy, in which it has been stated that the prosecution case was that on 12-5-1999 the driver of the vehicle in question transported 1300 litres of toddy and that was in excess of toddy allowed to be transported as per the permit. This would show that only allegation against the petitioners is that they have transported toddy in excess of the quantity mentioned in the permit. That would only amount to violation of the conditions of the permit which as per the decisions of this Court as well as the Supreme Court would constitute only an offence u/s 56(b). That being so, I do not think that the petitioners should be directed to undergo trial for a much serious offence u/s 55(a). Accordingly, I quash Ext. P2 to the extent the same charges with the petitioners with an offence u/s 55(a) and hold that the petitioners would be liable to be proceeded against only for offence u/s 56(b) of the Abkari Act pursuant to Ext. P2. However, the concerned criminal court would be free to proceed with the case against the petitioners in respect of the offence u/s 56(b) in accordance with law.

The original petition is disposed of as above.