
(2007) 09 KL CK 0093
In the High Court Of Kerala
Case No : Criminal M.C. No. 2665 of 2006

Sony C. Mathew

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 18-09-2007

Acts Referred:

Kerala Abkari Act, 1077 — Section 41A, 55, 64A

Citation : (2007) 3 KLJ 629

Hon'ble Judges : V.K. Mohanan, J

Bench : Single Bench

Advocate : C.C. Thomas, M.G. Karthikeyan, Nireesh Mathew, Josin Paul and Anand S.A, for the Appellant; C.M. Kammappu, PP, for the Respondent

Final Decision : Allowed

Judgement

V.K. Mohanan, J.—C.P. No. 26/2006 on the file of the Judicial Magistrate of the First Class Court, Alathur, is instituted upon the final report filed by the Circle Inspector of Police, Vadakkancherry police station after investigation in crime No. 377/2005 of Vadakkancherry police station wherein the offence alleged against the accused (3 in number) is that they have committed offence punishable u/s 55(a) of the Kerala Abkari Act. The petitioner who is the 3rd accused in the above case filed this CrI. M.C. with the prayer to quash annexure B final report to the extent it is against her.

2. The allegation against the accused in the above case is that the respondent and party seized the vehicle bearing Reg. No. KL-3/L-4170 at about 9.15 a.m. on 14-7-2005 on the allegation that 700 litres of spirit which was being transported in the above vehicle by one Vinod Varghese and Pradeep at Mangalam bridge in Palakkad District and thereby committed the offence u/s 55(a) of the Abkari Act. On the basis of the said allegation, the above mentioned persons were arrested from the spot itself and they were arrayed as accused Nos. 1 and 2 in Crime No. 377/2005. The 3rd accused is the petitioner herein. According to the petitioner, she is implicated and arrayed as 3rd accused for the sole reason that she

happened to be the registered owner of the vehicle from where the contraband article was seized. Hence, according to the petitioner, no offence will lie against her, especially, when there is no allegations implicating or attributing any role against her in the commission of the offence.

3. Heard the counsel for the petitioner as well as the learned Public Prosecutor.

4. I have gone through annexure B report filed in Crime 377/2005 based upon which C.P.26/2006 is set up in the Judicial First Class Magistrate's Court, Alathur. After taking me through annexure B report, the learned Counsel submitted that there is no allegation against the petitioner/A3 with respect to any role played by her in the commission of the offence. Going by annexure B report, it can be seen that what stated is that the vehicle bearing Reg. No. KL-3/L-4170 which is registered in the name of 3rd accused was used for transporting 700 litres of spirit by accused Nos. 1 and 2. The specific case of the prosecution is that accused Nos. 1 and 2 were arrested from the spot with the contraband article and seized the car used for transporting such contraband article. There is no case that the vehicle was used with the consent and knowledge of the petitioner who is the registered owner of the vehicle. No material is available on record to show any circumstance which capable of attributing intention of the petitioner to possess and transport the contraband article and to use her vehicle for the said purpose.

5. In this juncture, it is relevant to note an order passed by this Court, which produced along with the Crl.M.C. and marked as Annexure A. Annexure A is an order of granting anticipatory bail to the petitioner herein by this Court in the very same crime. Going by annexure A order, it can be seen that, after instruction, the Public Prosecutor submitted that except the fact that the petitioner happened to be the owner of the car, there is absolutely no other material to implicate the petitioner in the Crime. In paragraph 4 of annexure A order, this Court found that there are indications available to suggest that the petitioner's husband was the one who permitted the accused 1 and 2 to use the vehicle. It is relevant to note that after considering the materials on record this Court has passed an order, in spite of the provisions namely Section 41A of the Abkari Act, granting anticipatory bail to the petitioner. Thus, the materials show that at any stretch of imagination, the petitioner cannot be implicated in the above crime.

6. The learned Counsel appearing for the petitioner citing the decision reported in Sooraj v. Excise Inspector 2002 (1) K.L.J. 739 submitted that the position is covered by the said decision. In paragraph 10 of the above decision this Court has held:

The 4th accused was implicated in the case only in his capacity as owner of the vehicle and since he is the brother of the first accused. The Abkari Act does not contain any provision, whereby criminal liability is cast on the owner of the vehicle. It is another matter whether his vehicle is liable to be confiscated under

the relevant provisions of the Abkari Act. As long as there is an allegation that the 4th accused was involved directly or indirectly in the transport of contraband liquor and in the absence of any specific provision in the Abkari Act which casts a liability on the owner of the vehicle for the offences committed on using that vehicle, the contention of the petitioner deserves to be accepted.

7. In the present case also the only allegation is that the petitioner is the owner of the vehicle which used for transporting the contraband article and from where the spirit was seized. The same is the position as far as this case is concerned. Going by annexure B report, there is no material or allegation to connect the petitioner with the alleged offence except the mere fact that she happened to be the owner of the vehicle in question. In the absence of any specific allegation attributing any role to the petitioner for the commission of the offence, especially, when there is no provisions in the Abkari Act, casting any penal liability or registered owner of a vehicle which used for transporting the contraband article or from where such article was seized, no charge will lie against the petitioner u/s 55(a) of the Abkari Act.

8. It is pertinent to note that a special provision namely Section 64A is incorporated in the Abkari Act fixing penal liability for persons like owner of land, building, room, space or enclosure used for manufacture, sale or storing for sale of liquor or intoxicating drug. The Legislature has carefully excluded vehicles or vessels or such moving carts etc., since no presumption can be attributed unless it is specifically charged and proved that such vehicle or vessels or carts are used with the consent of its owners. Section 64A is applicable only if land or space or enclosure is allowed to be used for manufacturing the sale or storing for sale of liquor and not for transporting. In the present case, the prosecution has no case that either the petitioner was travelling in the vehicle from where the contraband article was seized and the other accused were arrested or the vehicle was used with her connivance. Therefore, the facts involved in the case squarely covered by the decision reported in *Rajan Vs. The Excise Inspector and Another*, . Therefore Section 64A is also not attracted in the case against the petitioner.

9. In the light of the above facts and circumstances, and the settled position of law, I am of the view that there is no meaning in allowing the proceedings of the court below against the petitioner and therefore it is just and proper to quash the proceedings pending in the court below, to the extent it is against the petitioner.

10. In the result, all the proceedings based upon annexure B final report in Crime No. 377/2005 of Vadakkancherry Police Station which is now pending as C.P. 26/2006 in the file of the Judicial Magistrate of the First Class Court, Alathur to the extent it is against the petitioner herein who is the 3rd accused, is quashed and accordingly allowed this Crl.M.C.