

(2009) 02 SC CK 0187

In the Supreme Court Of India

Case No : Criminal Appeal No's. 557-558 of 2002

State rep. by Tahsildar-Cum-Sales Officer

APPELLANT

Vs

M. Janakiraman and Another

RESPONDENT

Date of Decision : 09-02-2009

Acts Referred:

Pondicherry Excise Act, 1970 — Section 31, 33, 37, 38(1)

Citation : (2009) 1 ACR 841 : AIR 2009 SC 2005 : (2009) AIRSCW 1662 : (2009) 2 JT 337 : (2009) 2 SCALE 352 : (2009) 4 SCC 504 : (2009) 2 SCR 1076 : (2009) 1 Supreme 657

Hon'ble Judges : Asok Kumar Ganguly, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : V. Kanakraj, V.G. Pragasam, S. J. Aristotle, Prabhu Rama Subramanian and S. Thananjayan, for the Appellant; P. Radha Rani and P. Vijay Kumar for C.S.N. Mohan Rao, for the Respondent

Final Decision : Dismissed

Judgement

Arijit Pasayat, J.—Challenge in these appeals is to the judgment of acquittal recorded by a learned Single Judge of the Madras High Court. The respondents were accused in C.C. No. 195 of 1991 on the file of Chief Judicial Magistrate Pondicherry. Both of them were convicted for offences punishable under Sections 31, 33, 37(a) and 38(1) of Pondicherry Excise Act, 1970 (in short the 'Act') and each of them were sentenced to undergo rigorous imprisonment for six months under each head and the sentences were ordered to run concurrently and fine of Rs. 10,000/- with default stipulation was imposed. Appeals were preferred by the accused persons and learned IInd Additional Sessions Judge, Pondicherry affirmed the conviction so far as offence punishable under Sections 31, 33 and 37(a) are concerned. But the sentences were modified. The accused persons filed a Criminal Revision petitions before the Madras High Court.

2. Background facts in a nutshell are as follows:

On 28.4.1990 at 7.30 a.m. Tahsildar (Excise) Visanathan (PW-5) alongwith his

officials and police party went on a routine raid and they received information that some people were indulging in manufacturing illicit Indian Made Foreign Liquor (IMPL) at Aranganoor. They reached Aranganoor and when they went near the unfinished house of accused No. 1 Janakiraman, they noticed the smell of arrack coming from that house. On seeing them, a person who was standing there, ran away and they found a lady there. On enquiry, they came to know that she was Vasantha @ Kumari, the daughter-in-law of Janakiraman and the person who ran away from there, was accused No. 2 Settu another son of Janakiraman and the house belonged to accused No. 1. Janakiraman. Excise Officer, Viswanathan (PW.5) found a room in the house locked. When enquired, Vasantha told them that the key was with accused No. 2 who ran away from there. Thereupon, the lock was broken and they went inside and saw 2000 bottles containing illicit liquor (manufactured brandy) and they also found apparatus and other items for manufacturing illicit brandy alongwith empty bottles. Viswanathan (P.W.5) seized the materials under cover of Mahazar in the presence of Vasantha and Assistant Inspector. P.W registered a case in Crime No. 4 of 1990 under Sections 31, 33, 37(a) and 38(1) of the Act and sent the samples for chemical analysis. He examined the witnesses and made the final report. The trial Court and the first Appellate Court found the accused persons guilty.

The High Court by the impugned order allowed the Revision Petitions.

3. In support of the appeals, learned Counsel for the appellant-State submitted that the High Court's judgment is practically non-reasoned. It does not refer to the factual scenario or the evidence. Mere reference has been made to certain judgments of the High Court and this Court without even indicating as to how they are relevant for the purpose of this case. Learned Counsel for the respondents supported the judgment of the High Court.

4. We find that the only reason indicated by the High Court to direct acquittal reads as follows:

Chapter VIII of Pondicherry Excise Act deals with detection, investigation and trial of offences and its empowers the excise officers to conduct search to seize the articles liable for confiscation, to arrest without warrant to conduct investigation and to complete it since the excise officer is empowered to conduct search and is also entitled to make investigation and complete the same in accordance with law. The fact that the complainant himself conducted investigation in the present case would not vitiate the proceedings. The contention of the petitioners that the procedure adopted by PW-5 in filing the complaint and conducting the investigation are vitiated by illegality cannot be accepted.

5. The evidence of the witnesses and the conclusions of the trial Court and the first Appellate Court have not been referred to at all. When two courts had found the accused persons guilty, the High Court has even not indicated as to how the conclusions of the trial Court and the Appellate court were without any basis or

not sustainable. The manner of disposal of the Revision Petitions leaves much to be desired. Above being the position, we set aside the impugned judgment of the High Court and remit the matter to the High Court for a fresh consideration and disposal by a reasoned order. Needless to say that the factual scenario and the evidence has to be analysed by the High Court while deciding the revision petitions afresh.

6. The appeals are allowed to the aforesaid extent.