

(2016) 06 KL CK 0049

In the High Court Of Kerala

Case No : Crl. Rev. Pet. No. 3152 of 2009 (SC 73/2005 of Additional Sessions Court (Adhoc), Pathanamthitta)

Sujith

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 13-06-2016

Acts Referred:

Kerala Abkari Act, 1077 — Section 4

Citation : (2016) 3 KHC 823 : (2016) 3 KLT 434

Hon'ble Judges : Mr. Babu Mathew P. Joseph, J.

Bench : Single Bench

Advocate : Sri. C.C. Thomas (Sr.) Sri. Nireesh Mathew Sri. M.G. Karthikeyan, Advocates, for the Petitioner; Smt. Seena Ramakrishnan, Public Prosecutor, for the Respondent/Complainant

Final Decision : Allowed

Judgement

Babu Mathew P. Joseph, J. - The petitioner is the third accused in S.C. No. 73 of 2005 on the files of the Additional Sessions Court (Ad hoc)- I, Pathanamthitta. He preferred this revision petition praying for quashing the charge framed by the court against him in the said Sessions Case.

2. Heard Sri. C.C. Thomas, learned Senior Counsel appearing for the petitioner and Smt. Seena Ramakrishnan, learned Public Prosecutor appearing for the respondent.

3. The facts that are necessary for the disposal of this revision petition are briefly stated as follows: The Deputy Director of Income Tax(Investigation), Thiruvananthapuram, and his party conducted a search in the house of the first accused, who is the father of the petitioner, on 17.5.2000. Seventy jerrycans containing 34 litres each of spirit were found kept in a building near the residential building of the first accused. The building where the spirit was found stands in the name of the petitioner. On getting information from the Deputy Director of Income Tax (Investigation), Thiruvananthapuram, the Sub Inspector

of Police, Adoor Police Station, and his party reached there and seized the contraband under a mahazar. Thereafter, he returned to Adoor Police Station and registered a case, Crime No. 311 of 2000 of that Police Station, against the first accused in respect of the occurrence. In the F.I.R., the first accused alone was shown as committed the offence. The Circle Inspector of Police, Adoor, had investigated the case and submitted the Final Report before the Judicial First Class Magistrate's Court, Adoor, alleging the offences under Section 55(a) and (h) of the Abkari Act against the first accused. Subsequently, the Circle Inspector of Police, Adoor, submitted an application under Section 173(8) of Cr.P.C. before the learned Magistrate seeking permission for conducting further investigation of the case. Learned Magistrate granted permission for further investigation. While so, as per P.H.Q. Order No. Confdl. 88334/2000 dated 10.11.2000 and Order No. 41/Camp/CBSR/2000 dated 1.12.2000 of DIG(Crimes), Thiruvananthapuram, the investigation of the case was transferred to the Special Investigation Team for Spirit Smuggling Cases, Thiruvananthapuram, headed by the Deputy Superintendent of Police, Narcotic Cell, Alappuzha. Accordingly, the Special Investigation Team headed by the said Deputy Superintendent of Police had taken over the investigation of the case. During the course of investigation, the second accused was arrested and produced before the court. Subsequently, a report dated 17.2.2001 was filed by the investigating agency before the court implicating the petitioner and arraying him as the third accused. Thereafter, he was arrested on 17.3.2001 and produced before the court. The fourth accused was arrested on 15.9.2001 and produced before the court. There is one more accused in the case viz. the 5th accused. Subsequently, the fourth accused turned to be an approver as provided under Section 306 of Cr.P.C. as per orders of the court on 29.1.2002. Accordingly, his statement was recorded by the court on 18.2.2002. After the fourth accused turned to be an approver, the fifth accused was arrayed as the fourth accused. The Special Investigation Team completed the investigation and submitted the Final Report before the court.

4. Learned Magistrate, after complying with the required legal formalities, committed the case to the Court of Session, Pathanamthitta, and, from there, it was made over to the Additional Sessions Court (Ad hoc)-I, Pathanamthitta. The petitioner, at this juncture, filed Crl. M.C. No. 3557 of 2005 before this Court under Section 482 of Cr. P.C. for quashing the Final Report against him. This Court, by order dated 22.11.2006, disposed of that Crl. M.C. with the observation that the learned Sessions Judge must consider the petitioner's claim for discharge at the stage of Section 227/228 of Cr. P.C. Accordingly, the petitioner filed Crl. M.P. No. 228 of 2007 before the court below claiming discharge under Section 227 of Cr. P.C. But, the court below dismissed that petition. Thereafter, a charge had been framed by the court below against the accused 1 to 3 alone in the case as the 4th accused was no more. The offences alleged in the charge framed by the court below are under Sections 8(1) and (2), 55(a), (b), (h) and (i) and 57 of the Abkari Act and under Sections 120B and 201 read with Section 34 of IPC. The petitioner and the other accused pleaded not

guilty of the charge. At this juncture, the petitioner has preferred this Criminal Revision Petition for quashing the charge framed against him.

5. Learned Senior Counsel appearing for the petitioner submits that the petitioner was doing his LL.B. course at a Law College in Uduppi at the time of the alleged occurrence in this case. The building where the alleged occurrence had taken place stands in the name of the petitioner. That property was purchased by his father in his name in 1993 without his knowledge. He never involved in any abkari offence in relation to that building or otherwise. Nothing had been stated by any of the witnesses questioned by the investigating agency against the petitioner attracting the offences alleged against him. No statement implicating the petitioner had been made even by the approver. Therefore, the charge framed against the petitioner is baseless. Initially, the investigation was conducted by the local Circle Inspector of Police having jurisdiction over the area. He was a competent Abkari Officer for conducting investigation as per Notification issued by the Government of Kerala under Section 4 of the Abkari Act. In that investigation, nothing has come out against the petitioner. In the F.I.R., the first accused was named as the accused. After investigation also, the Circle Inspector of Police came to the conclusion that the first accused alone had committed the offences and nothing had been found against the petitioner. Subsequently, the Circle Inspector of Police sought for permission under Section 173 (8) of Cr. P.C. for conducting further investigation into the matter. Such a prayer of the investigating agency was granted by the learned Magistrate. While so, the investigation of the case was transferred to a Special Investigation Team headed by the Deputy Superintendent of Police, Narcotic Cell, Alappuzha, as per orders dated 10.11.2000 issued from the Police Headquarters and 1.12.2000 issued by the DIG (Crimes), Thiruvananthapuram. The Deputy Superintendent of Police, Narcotic Cell, Alappuzha, or the members of his team were not entitled to exercise the powers of investigation as they were not the Abkari Officers notified under Section 4 of the Abkari Act. The Government of Kerala have issued a Notification as S.R.O. No. 321 of 1996 exercising their powers under Section 4 of the Abkari Act appointing police officers and revenue officers as Abkari Officers for exercising powers of investigation and submission of Final Report etc. By that Notification all police officers of and above the rank of Sub Inspector of Police in charge of law and order and working in the general executive branch of the Police Department were appointed as Abkari Officers for exercising various powers including the powers of investigation and submission of Final Report. The Deputy Superintendent of Police, Narcotic Cell, Alappuzha, and the members of his team were not in charge of law and order and they were not working in the general executive branch of the Police Department at the relevant time. Therefore, they were incompetent to conduct investigation of the case and to submit Final Report before the court, submits the learned Senior Counsel.

6. The investigation of a case of this nature can be conducted by an Abkari Officer notified under Section 4 of the Abkari Act. Such a Notification had been issued by the Government of Kerala which is S.R.O. No. 321 of 1996. It reads as

follows:

"S.R.O. No. 321/96.-In exercise of the powers conferred by section 4 of the Abkari Act, I of 1077 the Government of Kerala hereby appoint all police officers of and above the rank of Sub Inspector of Police in charge of Law and Order and working in the General executive branch of the Police Department and all Revenue Officers of and above the rank of Deputy Collectors to be Abkari Officers under their respective Jurisdiction for the purposes of Sections 31, 32, 33, 34, 35, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53 and 59 of the Act and to exercise all the powers and to discharge all the duties conferred and imposed on Abkari officers, in the sections aforesaid.

This notification shall come into force with immediate effect. (G.O.(P) No. 69/ 96 /TD dated 29-3-1996)."

7. As per this Notification, the Government of Kerala appointed all police officers of and above the rank of Sub Inspector of Police in charge of law and order and working in the general executive branch of the Police Department and all revenue officers of and above the rank of Deputy Collectors to be Abkari Officers under their respective jurisdiction for the purposes of Sections 31, 32, 33, 34, 35, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53 and 59 of the Abkari Act and to exercise all the powers and to discharge all the duties conferred and imposed on Abkari Officers in the Sections aforesaid. Therefore, a police officer of and above the rank of Sub Inspector of Police in charge of law and order and working in the general executive branch of the Police Department appointed as an Abkari Officer alone can exercise the powers conferred and discharge the duties imposed under the aforesaid Sections of the Abkari Act. There cannot be any dispute and, as a matter of fact, there is no dispute with regard to the fact that the Deputy Superintendent of Police, Narcotic Cell, Alappuzha, was not a police officer in charge of law and order and working in the general executive branch of the Police Department. He was an officer in the Narcotic Cell, Alappuzha, at the relevant time empowered with powers and duties connected therewith. It is quite evident from the Final Report filed after further investigation that the investigation was conducted by CW62, the Deputy Superintendent of Police, Narcotic Cell, Alappuzha, and CW61, the Deputy Superintendent of Police, CBCID, Kottayam. Just like CW62, CW61 was also not in charge of law and order and working in the general executive branch of the Police Department at the relevant time. He was working as the Deputy Superintendent of Police in the Crime Branch CID, Kottayam, at the relevant time. These two officers who conducted further investigation of the case were not in charge of law and order and working in the general executive branch of the Police Department. Therefore, they were not Abkari Officers empowered with powers and duties of investigation as specified in the Notification issued by the Government of Kerala under Section 4 of the Abkari Act namely, S.R.O. No. 321 of 1996.

8. The orders dated 10.11.2000 issued from the Police Headquarters and 1.12.2000 issued by the DIG (Crimes), Thiruvananthapuram, cannot be equated

with a Notification issued under Section 4 of the Abkari Act by the Government of Kerala. An officer appointed as an Abkari Officer by way of a Notification issued under Section 4 of the Abkari Act by the Government of Kerala alone can be an Abkari Officer empowered with the powers of investigation. Such a power which can be exercised by the Government of Kerala under Section 4 of the Abkari Act cannot be exercised by the Police Headquarters or the Deputy Inspector General (Crimes) as happened in this case. Here is a case where two Deputy Superintendents of Police, one of CBCID, Kottayam, and another of Narcotic Cell, Alappuzha, both were not in charge of law and order and were not working in the general executive branch of the Police Department, had conducted the investigation and the Deputy Superintendent of Police, Narcotic Cell, Alappuzha, had submitted the Final Report before the court after such incompetent investigation. No Notification issued by the Government of Kerala under Section 4 of the Abkari Act appointing CWs. 61 and 62 has been brought to the notice of this Court. There is no dispute also in regard to the fact that the Government alone is empowered under the Abkari Act to issue Notification under Section 4 of the Abkari Act appointing competent Abkari Officers for conducting investigation and submitting Final Report before the court.

9. Since the investigation was conducted by CWs. 61 and 62, incompetent officers, and the Final Report was filed by CW62, an incompetent officer, the court below had no jurisdiction to take cognizance of the offences alleged in the complaint filed based on such investigation. The court below framed a charge against three accused including the petitioner alleging the offences under Sections 8(1) and (2), 55 (a), (b), (h) and (i) and 57 of the Abkari Act and under Sections 120B and 201 read with Section 34 of IPC. The charge thus framed includes not only abkari offences but also IPC offences. Therefore, a question may arise that even if the investigation conducted by CWs. 61 and 62 was bad for want of powers in relation to abkari offences, the petitioner can be proceeded against for the IPC offences alleged against him. After considering the facts on record, it can be seen that the offences under Sections 120B and 201 read with Section 34 of IPC were incorporated in the charge along with the abkari offences as those offences had been allegedly committed in relation to the commission of abkari offences. So, the predominant offences are abkari offences. Moreover, the Abkari Act itself contains Section 55D providing for penalty for criminal conspiracy. In short, the IPC offences alleged cannot have any independent existence without the existence of the abkari offences alleged. Therefore, the petitioner cannot be proceeded against for the IPC offences as well. Since the court below had no jurisdiction to take cognizance of the offences alleged against the petitioner as already stated, the court below could not have framed a charge against him as it was without jurisdiction. In such a circumstance, a trial of the case cannot be followed against the petitioner. He is entitled to be discharged as provided under Section 227 of Cr.P.C. Since the petitioner is entitled to be discharged, the charge framed by the court below against him is without jurisdiction and hence liable to be quashed.

10. In the result, the petitioner is discharged under Section 227 of Cr. P.C. and the charge framed by the court below against him is quashed.

11. This Criminal Revision Petition is allowed.