
(1967) 07 KL CK 0003

In the High Court Of Kerala

Case No : Criminal Appeal No's. 14, 15, 16, 17, 21, 45, 46 and 47 of 1967.

The Executive Authority, Punalur Panchayat

APPELLANT

Vs

C.G. Kumaran Vaidyan and seven Others

RESPONDENT

Date of Decision : 06-07-1967

Acts Referred:

Kerala Panchayat (Licensing of Dangerous and Offensive Trades and Factories) Rules, 1963 — Rule 6, 8

Kerala Panchayat Act, 1960 — Section 119

Citation : (1968) KLJ 168

Hon'ble Judges : K.K. Mathew, J

Bench : Single Bench

Advocate : T.M. Cheriyan, for the Appellant; C.K. Sivasankara Panicker, D. Narayanan Poti, P.G. Parameswara Panicker, N. Govindan Nair, T.A. Narayanan Nair, P.N. Rajan, S. Easwara Iyer, L. Gopalakrishnan Poti, C.S. Rajan and M. Krishnan Nair, for the Respondent

Final Decision : Allowed

Judgement

K.K. Mathew, J.—The appellants are the same in all these cases. The respondents are Ayurvedic Physicians having their places of business within the Punalur Panchayat. The Executive Authority of that Panchayat filed complaints against the respondents before the Sub Magistrate's Court, Punalur, under Sc. 96 and 131 of the Panchayats Act, read with Rule 7 of the licensing of Dangerous and Offensive Trades and Factories Rules, 1963 and bye-law 4 of the bye-laws framed under rule 7, in that they have manufactured and stored "aristhams" and "asavams" in their Vydyasalas without taking the necessary license from the Executive Authority of the Panchayat for the financial years 1965-66 and 1966-67. By the complaints, the licence fees and the notice charges were also sought to be recovered. The accused raised two contentions, viz. that the Panchayat has not framed and published the bye-laws in accordance with law and that the complaints were barred by time. On the first point, the learned Magistrate held that the bye-laws were framed and published as required by law, but on the

second question, he found that the complaints were barred by time on the ground that they have not been filed within three months of the commission of the offences as required by Section 119 of the Kerala Panchayats Act, and acquitted the accused. Section 119 reads as follows:-

Save as otherwise expressly provided in this Act, no person shall be tried for any offence against this Act or any rule or bye-law made thereunder unless complaint is made by the police, the executive authority or a person expressly authorized in this behalf by the Panchayat or executive authority within three months of the commission of the offence, but nothing herein shall affect the provisions of the Code of Criminal Procedure, 1898, in regard to the power of certain Magistrates to take cognizance of offences upon information received or upon their own knowledge or suspicion:

Provided that failure to take out a license or obtain permission under this Act, shall, for the purpose of this section, be deemed to be a continuing offence until the expiration of the period, if any, for which the license or permission is required and if no period is specified, complaint may be made at any time within 12 months from the commencement of the offence.

Rule 8 of the Rules above referred to provides that every license granted under Rule 6 shall expire at the end of the year or such earlier date as may be specified therein. It is clear from Section 119 that the offence of not taking out license as required by the Act is a continuing offence until the expiration of the period for which the license or permission is required, and therefore, the offences in these cases were committed on the last day of the financial year, 1965-66, so far as the failure to take out licenses for the year 1965-66 is concerned. The complaints were filed on 29.6.1966, i.e., clearly within three months of the last date of the financial year, 1965-66. The learned Magistrate has himself found that the complaints so far as they relate to the offences committed for failure to take out licenses for the year 1966-67 were not barred by time. Therefore, it has to be held that the complaints were filed within the time prescribed. The learned Magistrate was wrong in holding that the complaints were barred by limitation.

2. It was argued on behalf of the accused that even assuming that the accused did not take out the license, no offence has been committed, the argument being that "arishtams" and "asavams" are not chemical preparations as specified in Schedule 1 to the rules referred to above. Section 96 of the Act reads as follows:-

The Panchayat may with the previous approval of the Director notify that no place in the Panchayat area shall be used for any of the purposes specified in the rules made in this behalf being purposes which in the opinion of Government, are likely to be offensive or dangerous to human life or health or property, without a license issued by the executive authority and except in accordance with the conditions specified in such license.

Provided that no such notification shall take effect until the expiry of sixty days from the date of its publication.

Under Rule 3 of the Rules the Government have specified in Schedule 1 to the rules the purposes for which a place within the limits of the Panchayat cannot be used without a license. Storing of chemical preparations is one of the purposes. The question is whether "arishtams" and "asavams" are chemical preparations. The ruling in *Municipal Commissioner v Kanari Vaidyar* 1966 K.L.T 704 following an earlier decision of Govinda Menon J. in *Executive Authority of Vilakudy Panchayat v Janardhana Rao*, 1964 KLT 441 has held that "arishtams" and "asavams" are chemical preparations. Govinda Menon J. has given sufficient reasons in his judgment for coming to that conclusion. I see no reason for not following these decisions. I follow them and hold that "arishtams" and "asavams" are chemical preparations, that under the bye-laws each of the accused was bound to take out the license after paying Rs. 25/- as license fee and that since they have not taken the license, they must be adjudged guilty of the offence.

3. In Criminal Appeal No. 14 of 1967 Mr. Sivasankara Panicker contended that there is no evidence to show that his client was dealing in "arishtams" and "asavams". I think, the evidence of P.Ws. 1 and 2 is sufficient to show that he was dealing in "arishtams" and "asavams".

4. Mr. Krishnan Nair, appearing in one of the cases, contended that there is no notification as provided in Section 96 of the Act by the Government. It appears to me that bye-laws have been notified in the manner prescribed. I therefore see no substance in the contention. In the result, the orders of acquittal are set aside and I convict the accused u/s 96 of the Act, read with Section 131 and Bye-law 4 of the Bye-laws, and sentence each of them to pay a fine of Rs. 15/-, and in default to undergo simple imprisonment for two days, and direct each of them to pay Rs. 51/- to the Panchayat towards license fee and notice charges u/s 109(6) of the Act.

The appeals are allowed in the manner indicated.