
(2010) 11 KL CK 0105

In the High Court Of Kerala

Case No : Criminal M.C. No's. 4014, 4016, 4017, 4018, 4059, 4425 and 4477 of 2010

Varkey Devassia, P.R. Ashokan, Jose Lukose and Divakaran

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 24-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Kerala Abkari Act, 1077 — Section 56, 57

Kerala Abkari Shops (Disposal in Auction) Rules, 1974 — Rule 9

Citation : (2010) 11 KL CK 0105

Hon'ble Judges : M. Sasidharan Nambiar, J

Bench : Single Bench

Advocate : Prasun S, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Sasidharan Nambiar, J.—Petitioners are the accused in C.R. Nos. 30/2010 and 31/2010 of Pala Excise Range and C.R. Nos. 51/2010, 50/2010, 52/2010, 59/2010 and 58/2010 of Kanjirappally Excise Range, registered for the offences under Sections 56(b) and 57(a) of Abkari Act on the allegation that when the samples taken from the respective toddy shops were sent for chemical analysis, the report of chemical analysis showed that Petitioners violated the conditions of license as provided under Rule 9(2) of Abkari Shops (Disposal in auction) Rules and thereby committed the offences. These petitions are filed u/s 482 of Code of Criminal Procedure to quash the proceedings contending that in view of the decision of this Court in Komalan Vs. State of Kerala and Others, , as reviewed in Dasan and Others Vs. State of Kerala and Others, , when the certificate of chemical analysis produced in each case establishes that percentage of ethyl alcohol does not exceed 8.1%, continuation of the proceedings is only an abuse of process of the court and therefore, it is to be quashed.

2. Learned senior counsel appearing for the Petitioners and learned Public

Prosecutor were heard. Learned Public Prosecutor submitted that in view of the decision of this Court, a refer report is being submitted in CrI. M.C. Nos. 4425/2010 and 4477/2010.

3. Respective certificates of chemical analysis establish that percentage of ethyl alcohol in respect of each sample taken is less than the permissible limit of 8.1%. In such circumstances, as held by this Court in Komalam's case (supra), as reviewed in Dasan's case (supra), the cognizance taken can only be quashed.

Petitions are allowed C.R. Nos. 30/2010 and 31/2010 of Pala Excise Range and C.R. Nos. 51/2010, 50/2010, 52/2010, 59/2010 and 58/2010 of Kanjirappally Excise Range are quashed.