

(2017) 11 KL CK 0004
In the High Court Of Kerala
Case No : 500 of 2006

VELAYUDHAN.S/O.RAMAN, KOZHISSEERIL

APPELLANT

Vs

STATE OF KERALA

RESPONDENT

Date of Decision : 14-11-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 397](#), [Section 313](#) -
Kerala Abkari Act, 1967, Section 8(2), Section 55(a)

Citation : (2017) 11 KL CK 0004

Hon'ble Judges : P.Ubaid

Bench : SINGLE BENCH

Advocate : P.V.KUNHIKRISHNAN, C.N.PRABHAKARAN

Final Decision : Allowed

Judgement

1. The revision petitioner herein is the accused in S.C No.349/2000 of the Court of Session, Kozhikode. He faced prosecution before the court below on the allegation that at about 2.30 p.m on 12.11.1999, he was found possessing 1.50 litres of arrack in a plastic can of 5 litres capacity. The offence was detected by a Preventive Officer of the Feroke Excise Range. He arrested the accused on the spot, and seized the plastic can containing arrack as per a mahazar. Investigation was taken over by the Excise Inspector and after investigation, he submitted final report in court.

2. The accused appeared before the learned First Additional Asst. Sessions Judge, Kozhikode, and pleaded not guilty to the charge framed against him under Sections 55 (a) and 8(2) of the Kerala Abkari Act ("the Act" for short).

3. The prosecution examined four witnesses in the trial court and proved Exts.P1 to P7 documents. The MO1 property was also identified during trial. When examined under Section 313 Cr.P.C, the accused denied the incriminating circumstances. He did not adduce any oral evidence in defence. However, Ext.D1 was marked on his side.

4. On an appreciation of the evidence, the trial court found the accused guilty under Section 8(2) of the Act. On conviction, he was sentenced to undergo rigorous imprisonment for three years, and to pay a fine of 1 lakh by judgment dated 28.9.2001. Aggrieved by the judgment of conviction, he filed appeal before the Court of Session as Crl.A 554/2001. In appeal, the learned Additional Sessions Judge, (Adhoc-II), Kozikode confirmed the conviction, but reduced the substantive sentence to rigorous imprisonment for 1 = years. The minimum fine sentence was maintained in appeal by judgment dated 29.9.2005. Now the accused is before this Court in revision under Section 397 Cr.P.C.

5. When this revision petition came up for hearing, the learned counsel for the petitioner submitted that there is a serious legal infirmity in this case, that the crime and occurrence report was registered by a Preventive Officer who was not competent at that time, and so the accused is entitled for acquittal on that ground.

6. Of the four witnesses examined in the trial court,

PW1 is the Preventive Officer who detected the offence and PW4 is the Excise Inspector who investigated the case. PW2 is the Excise Guard who assisted the Preventive Officer in the process of detection. PW3, examined as independent witness, turned hostile.

7. This Court has settled that the different functions under the Kerala Abkari Act can be discharged only by the Officers specifically authorised as Abkari Officers under Section 4 of the Kerala Abkari Act by the Government. The Government Notification in force at the time of detection was the Notification SRO 234/1967. Under the said notification, Preventive Officers had no power or competence to register crime and occurrence report. Only the Range Inspector of the particular Range could register crime and occurrence report at that time. Of course, Preventive Officers are competent to detect offences, but once an offence is detected, he is bound to report the facts ? at the Range Office. In this case, the crime and occurrence report was registered by a Preventive Officer. This is a legal infirmity. A case built on a crime and occurrence report registered by an incompetent officer must collapse. This position stands settled by this Court.

8. On a perusal of the materials, I find reason to believe that the case was investigated by the Preventive Officer himself till 20.9.2000, when the Excise Inspector took over the investigation. The detection was made on 12.11.1999. There is nothing to show that in between the date of detection and 20.9.2000, the crime was investigated by the Excise Inspector. This is also a legal infirmity, the benefit of which must necessarily go to the

accused. The evidence of PW1 shows that he is not certain what seal was in fact affixed on the sample and the plastic can. He stated that it is not the seal provided by the Government or his personal seal. Here, the question of identification of the sample assumes importance.

In the result, this petition is allowed. The revision petitioner is found not guilty of the offence under Section 8 (2) of the Kerala Abkari Act and he is acquitted of the said offence in revision. Accordingly, the conviction and sentence against him in SC 349/2000 of the court below and confirmed in appeal will stand set aside and the revision petitioner will stand released from prosecution.