
Navas Vs State of Kerala

Criminal Rev. Pet. No. 2065 of 2014

Court: High Court Of Kerala

Date of Decision: Sept. 9, 2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) - Section 227, 239, 245#Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 22#Penal Code, 1860 (IPC) - Section 120B, 302, 307, 308, 328

Hon'ble Judges: C.T. Ravi Kumar, J

Bench: Single Bench

Advocate: C.C. Thomas, Senior Advocate and Nireesh Mathew, for the Appellant; K.K. Rajeev, Public Prosecutor, Advocates for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

C.T. Ravi Kumar, J

The revisionist is accused No. 13 in S.C. No. 1668 of 2009 on the files of the Court of Additional Sessions Judge-I,

Kollam. This criminal revision petition has been filed on being aggrieved by the charge framed against the revision petitioner in the said Sessions

Case. The revision petitioner along with 15 co-accused are facing indictment for offences punishable under sections 55(a), 57A, section 8(1) and

(2) of the Abkari Act read with Rule 7 of the Abkari Rules and sections 120B, 302, 307 and 308 read with section 34 of the Indian Penal Code

and under section 22 of the Narcotic Drugs and Psychotropic Substances Act.

2. S.C. No. 1668 of 2009 arose from crime No. 357 of 2007 originally registered at Kunnikode Police Station. After its registration three more

cases were registered as crime Nos. 358, 359 and 360 of 2007 in respect of the incident in question and later all those cases were consolidated as

one crime viz., crime No. 357 of 2007. The incident that led to the registration of the aforesaid crime occurred on 28.8.2007. On that day,

consumption of toddy from T.S. No. 14 of Avaneeswaram in Pathanapuram Excise Range caused the death of three persons and also caused

grievous hurt to 17 persons namely CWs 3 to 19. Going by the accusation, in furtherance of the common intention and criminal conspiracy hatched

intoxicating drug was manufactured by adulteration of toddy with rectified spirit and diazepam and such adulterated and poisonous toddy was

found in possession and in transit and also in concealed possession in a marshy land. The consumption of such manufactured intoxicating drug

caused the aforesaid calamity. After registering the aforesaid crimes and after its consolidation as crime No. 357 of 2007 investigation was

conducted and on its completion, final report was laid by the Deputy Superintendent of Police, CBCID, Kollam. It is now pending as S.C. No.

1668 of 2008 before the Court of Additional Sessions Judge-I, Kollam.

3. The revision petitioner/accused No. 13 filed a petition under section 227 of the Code of Criminal Procedure seeking his discharge and the same

was dismissed by the trial court. After its dismissal charge was framed against all the accused including the revision petitioner. Though the revision

petitioner has stated that the application for discharge filed by him was dismissed the copy of the said order was not produced along with this

petition. It is also to be noted that the petitioner has not stated in the revision petition as to when the same was dismissed and whether it was

dismissed as per a separate order and evidently, the details relating such an order are conspicuously absent in this revision petition. At the same

time, evidently, the petitioner has taken up specific grounds to contend that he is entitled to get discharge under section 227, Cr.P.C and specific

relief relating discharge has also been sought for. Obviously, the petitioner has also raised grounds and sought relief relating the grievance against

the framing of charge. The charge framed against the petitioner and the other accused has been produced along with this petition. At the outset it is

to be noted that if an application for discharge filed by an accused is dismissed invariably charge has to be framed. Evidently, charge was framed

against the revision petitioner/accused No. 13 and also against accused 1 to 12 and 14 and 15. A perusal of the charge framed against the revision

petitioner and others produced in this revision petition would reveal that the charge was framed against them as hereunder:--

That you on 27.8.07 at night and 28.8.07 at 6 am onwards A11 & A12 among you, were the licensees and A1 among you was the manager of

the toddy shop bearing No. TS 14 Avaneeswaram also known as Devasahayam situate on the southern side of Kunnikodu-Pathanapuram road at

Avaneeswaram in furtherance of your common intention criminally conspired with others found in possession for sale and in transit of 2100 litres of

rectified spirit and adulterated toddy in the toddy shop bearing No. TS 14 Avaneeswaram also known as Devasahayam and concealed in the

marshy land situated on the western side of the toddy shop nearby and thereby committed offence punishable u/s. 55(a) of the Kerala Abkari Act

which is within my cognizance.

That you, on the same day at the same time and place in furtherance of your common intention criminally conspired and found in possession and

engaged in the sale of adulterated toddy blended with rectified spirit and diazepam and thereby committed offence punishable u/s. 55(1) of the

Kerala Abkari Act which is within my cognizance.

That you, on the same day at the same time and place manufactured intoxicating drug by adulteration of toddy with rectified spirit and diazepam

drug causing death to late Sudhakaran, Georgekutty, Mohammed Shereef and grievous hurt to CWs 3 to 19 and thereby committed the offence

punishable u/s. 57A of the Abkari Act and within the cognizance of this court of Sessions.

That you, on the same day at the same time and place engaged in the manufacture and sale of spurious liquor by blending toddy with rectified spirit

and diazepam in violation of the conditions of licence and thereby committed the offence punishable u/s. 8(1) & (2) of the Abkari Act r/w Rule 7 of

the Abkari Rules and within the cognizance of this Court of Sessions.

That you, on the same day at the same time and place in furtherance of your common intention criminally conspired to manufacture, possess and

sell spurious liquor and thereby committed the offence punishable u/s. 120B r/w Sec. 34 of IPC and within the cognizance of this court of

Sessions.

That you, on the same day at the same time and place administered adulterated toddy blended with rectified spirit and diazepam and committed

murder of late Sudhakaran, Georgekutty, Mohammed Shereef and thereby committed the offence punishable u/s. 302 r/w Sec. 34 of IPC and

within the cognizance of this court of Sessions.

That you, on the same day at the same time and place administered adulterated toddy blended with rectified spirit and diazepam causing grievous

hurt to CWs 3 to 19 and thereby committed the offence punishable u/s. 328 r/w. Sec. 34 of IPC and within the cognizance of this court of

Sessions.

That you, on the same day at the same time and place administered adulterated and poisonous toddy blended with rectified spirit and diazepam

causing grievous hurt to CWs 3 to 19 and thereby committed the offence punishable u/s. 328 r/w. Sec. 34 of IPC and within the cognizance of this

court of Sessions.

That you, on the same day at the same time and place where in possession for sale and engaged in the manufacture of illicit drug by blending toddy

with rectified spirit and diazepam and thereby committed the offence punishable u/s. 22 of the NDPS Act and within the cognizance of this court of

Sessions.

4. I have heard the learned senior counsel appearing for the revision petitioner and also the learned Public Prosecutor. The learned senior counsel

contended that the revision petitioner is not the licensee of T.S. No. 14 of Avaneeswaram and no specific allegation of conspiracy was also raised

against the revision petitioner and the accusation against him is that he transported toddy on 28.8.2007 to a building belonging to one Basheer

situated about 78.40 metres away from T.S. No. 14. According to the revision petitioner, if the said allegation is found true it would only reveal

that he had only innocently transported toddy in his auto bonafidely believing that natural toddy is kept in T.S No. 14. It is the further contention

that transporting toddy from a toddy shop is not an offence and in such circumstances the charge against the petitioner is liable to be quashed and

he is entitled to get discharge. With reference to the charge it is submitted that the allegation of manufacturing spurious liquor is made only against

accused 1 to 12. In short, the contention is that there is no specific allegation against him in regard to conspiracy, manufacturing artificial toddy,

supplying of toddy to customers or to any other person with knowledge that the toddy is adulterated or poisonous. Going by the charge, it is

evident that the case of the prosecution is that in furtherance of the common intention the accused specifically mentioned have criminally conspired

with others and engaged in the manufacturing of spurious liquor by blending toddy with artificial spirit and diazepam and they were sold,

transported and concealed. In that context it is to be noted that the prosecution has cited CW67 and 68 to prove that on 13.9.2007 the revision

petitioner had taken 13 cannas containing such liquid from a marshy land belonging to CW62, before CW43. Accused 14 is the brother of the

revision petitioner. The mobile phones belonging to accused 13 and 14 were seized and it is sought to be proved through CW93. One Vijayan is

cited as CW98 to prove that he had sold mobile phone to the revision petitioner. One Ummerkutty is cited as CW88 to establish that he has sold

auto bearing Reg. No. KL 2/M 8705 to the petitioner. One Shameerkutty and Kiran are cited as CW67 and 68 to prove the allegation that on

13.9.2007 the revision petitioner had taken 13 cannas containing spirit from the marshy land belonging to CW62 and produced it before CW43.

5. In the context of the contentions, the decision of the Hon"ble Apex Court in Sonu Gupta Vs. Deepak Gupta and Others(2015) 3 AD 1 : (2015)

2 Crimes 1 : (2015) 2 JCC 969 : (2015) 2 RCR(Criminal) 32 : (2015) 2 SCALE 295 : (2015) 3 SCC 424 : (2015) 2 SCJ 613 assumes

relevance. It was held therein that even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the

requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is

also a settled proposition of law that even when there are no materials raising strong suspicion against an accused, the court will be justified in

rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so

that case of both sides may be considered appropriately on conclusion of trial. Obviously, that was not a case involving consideration of the

correctness of rejection of an application for discharge under section 227, Cr.P.C. Still, I am of the view that those observations aptly apply in a

case of serious nature like the one on hand. The Hon"ble Apex Court considered the question of discharge under the various provisions under the

Code viz., under sections 227, 239 and 245 and reiterated the principles in the decision in *Sherish Hardenia and Others Vs. State of M.P.* and

Another, (2014) 1 AD 456 : (2014) 1 CCR 92 : (2014) 1 DMC 254 : (2014) 2 JCC 1354 : (2014) 1 JCC 369 : (2014) 1 JT 336 : (2014) 1 JT

286 : (2014) 1 RCR(Criminal) 342 : (2013) 15 SCALE 260 : (2014) 3 SCJ 637 .

6. When conspiracy by the main accused persons in the matter of manufacturing of spurious liquor by blending toddy with artificial spirit and

diazepam and selling, transportation and concealment of the same with others is framed as a charge, it will not be proper and in the interest of

justice, at this stage, to conduct a roving enquiry to find out whether any specific role of the petitioner is made out to proceed against him and I am

of the considered view that discharge of an accused in a matter like this might ultimately result in miscarriage of justice by extracting the real truth.

At this stage, it cannot be decided as to who is the connecting link and what exactly is the role of each and every accused in the incident in question

in respect of which the crime was registered and ultimately pending trial in S.C. No. 1668 of 2009. The petitioner cannot, at this stage, canvass the

position of absolute absence of any material to accuse him of a role in the incident and I am of the view that it is a matter of evidence and the

prosecution must obtain an opportunity to bring on record the entire evidence in accordance with law, to fix the culpability or complicity of each

accused in a matter of this nature. Even if there is any defect or lack of clarity in the charge, those matters cannot be said to be incurable and at any

rate, I do not find any reason to interfere with the charge framed in S.C. No. 1668 of 2009. In the circumstances, I do not find any merit in the

challenge against the framing of the charge as also against the rejection of the petitioner"s application for discharge. Hence, this revision petition is

liable to fail and accordingly, it is dismissed.