

(2017) 11 KL CK 0012

High Court Of Kerala

Case No: 575 of 2007

C. NARAYANAN, S/O.CHANE

APPELLANT

Vs

THE STATE OF KERALA

RESPONDENT

Date of Decision: Nov. 23, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 313 -
- Kerala Abkari Act, 1967, Section 4, Section 55(g)

Hon'ble Judges: P.Ubaid

Bench: SINGLE BENCH

Advocate: RAHUL SASI, T.R. RENJITH

Final Decision: Allowed

Judgement

1. The revision petitioner herein is the accused in S.C 975/2000 of the Court of Session, Kasaragod. He faced prosecution before the learned Assistant Sessions Judge, Hosdurg under Section 55 (g) of the Kerala Abkari Act (for short" the Act"), on the allegation that at about 4 p.m on 25.8.1998, he was found possessing 20 litres of wash in a plastic can of 30 litres capacity. The offence was detected by an Excise Inspector of the Special Squad, Kasaragod. He arrested the accused on the spot, and seized the contraband articles as per a mahazar. On the basis of the said arrest and seizure, an Excise Inspector of the Neeleswar Excise Range registered the crime and occurrence report. Another Excise Inspector of the Range conducted investigation and submitted final report in court. The accused appeared before the learned trial Judge and pleaded not guilty to the charge framed against him.

2. The prosecution examined seven witnesses in the trial court, and proved Exts.P1 to P9 documents. The MO1 property was also identified during trial. The accused denied the incriminating circumstances when examined under Section 313 Cr.P.C. He did not adduce any evidence in defence.

3. On an appreciation of the evidence, the trial court found the accused guilty. On conviction, he was sentenced to undergo simple imprisonment for one year, and to pay a fine of 1 lakh by judgment dated 28.11.2005. Aggrieved by the judgment of conviction, the accused approached the Court of Session, Kasaragod with Crl.A 370/2005. In appeal, the learned Sessions Judge confirmed the conviction, but modified and reduced the sentence. Accordingly, the substantive sentence was reduced to simple imprisonment for three months by judgment dated 17.11.2006. Now the accused is before this Court in revision.

4. On hearing both sides, and on a perusal of the materials, I find that there is a serious legal infirmity in this case, the benefit of which must necessarily go to the accused. This Court has consistently held in so many decisions that the various functions under the Act can be discharged only by the Officers specifically authorised and appointed by the Government as Abkari Officers under Section 4 of the Act. In 1967, the Government of Kerala issued a notification under Section 4 of the Act as SRO 234/1967 by which different powers under the Act were conferred on different categories of Excise Officials of the regular excise wing. The members/officers of Special Squads like the Excise Intelligence Squad or the Excise Enforcement and Anti-Narcotic Squad were not given powers as per the said Notification. Such categories of officers got powers under the Act only in 2009, as per the Government Notification SRO 361/2009 dated 8.5.2009. This Court has settled the legal position that even the benefit of the proviso to the 1967 Notification as regards detection could be availed only by the categories of officers covered by the Government Notification. Members of Special squads, who are not covered by the 1967 Notification, cannot avail the benefit or privilege of the said proviso and proceed to detect offences within excise ranges. In this case, the offence was detected by PW1 who was only a Preventive Officer of the Special Squad. Of course, the other functions were discharged by competent officers. That will not correct the illegality vitiating the prosecution that the detection was made by an incompetent officer. On this ground itself, the accused is entitled for acquittal. So the factual aspects need not be probed into.

5. There is yet another infirmity in this case that production of the property before the court was delayed by 20 days. The detection was made in this case on 25.8.1998, but the properties were produced in court only on 14.9.1998. There is no satisfactory explanation for this delay. It is not known in whose custody the property was during this period. Thus, there is no material to rule out the possibility of tampering with the property. On this ground also, the accused is entitled for acquittal.

In the result, this petition is allowed. The revision petitioner is found not guilty of the offence under Section 55 (g) of the Kerala Abkari Act and he is acquitted of the said offence in revision. Accordingly, the conviction and sentence against him in SC 975/2000 of the court below and confirmed in appeal will stand set aside and the

revision petitioner will stand released from prosecution.