

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

CrI.A.No.293 of 2007
and
M.P.No.8458 of 2007

State rep. by Office of Excise Inspector,
Mahe .. Appellant
..Vs.

1. M.K.Bijoy
2. P.Ramakrishnan .. Respondent

This Criminal Appeal is filed under Section 397 & 401 of Cr.P.C., against the order of acquittal passed by the Judicial Magistrate (Sub Judge), Mahe dated 29.08.2006 in C.C.No.12/2006.

For Petitioner : Mr.M.R.Thangavelu
Additional Public Prosecutor

For Respondents : Mr.V.R.Sathyamurthy (R1 & R2)

JUDGMENT

This appeal has been preferred by State/Union Territory of Puducherry through Excise Inspector, Mahe as against the order of acquittal of A1 and A2 passed in C.C.No.12 of 2006 by the learned Judicial Magistrate (Sub Judge), Mahe.

2. In the said Court, A1 and A2 were tried for charges under Sections 31 (a) and 33 of Pondicherry Excise (Amendment) Act, 1989.

3. The prosecution version of the case in brief runs as under:

(i) On 22.01.2003, at Pandakkal, the appellant, P.W.1, Sridharan, V.A.O, and other official have raided the upstairs of the premises of Sai Nilayam. 333 cases of Indian Made Foreign Liquor (IMFL) were found. A1 was standing there. In the presence of P.W.'s 2 and 3, P.W.1 had seized the property. P.W.'s 5 and 6 are revenue officials, P.W.4 investigated this case. Completing the investigation final report for offences

under Sections 31 (a) and 33 of Pondicherry Excise (Amendment Act), 1989 has been filed before the Trial Court.

4. To substantiate charges, prosecution examined P.W's 1 to 6 and marked Exs.P1 and P2.

5. When examined under Section 313 Cr.P.C., on the incriminating aspects of the prosecution evidence, the accused have denied their complicity in the case.

6. The accused have examined Vijayan, Municipal official of Mahe, as D.W.1 to show that the building where the raid was conducted actually belongs to one Achuthan and Ex.D1 also has been marked.

7. Appreciating the said evidence, the trial Court concluded that the prosecution had failed to establish the ownership of the building by A2 and there was no scientific evidence to establish that the seized item are Indian Made Foreign liquor, an intoxicating item. Thus, the learned Magistrate acquitted them.

8. Being Aggrieved, the State has directed this revision, as against the said order of acquittal.

9. Now, A2 has passed away. Now, this appeal is confined to A1 only.

10. The learned Additional Public Prosecutor (Puducherry) would contend that when the raid was conducted, A1 was found in the building. Unless he was not connected with the building, he has no business to present there, he may be there as owner of the building or in possession of the building. Though, Chemical Analyst's report was received, it could not be marked as evidence. In the facts and circumstances, the accused ought to have been convicted, however, acquitted.

11. On the other hand, the learned counsel for the first respondent A1 would contend that the order of acquittal passed by the learned Magistrate is a well considered. It has been passed after appreciating the evidence in proper perspective.

12. The learned counsel for the respondent further contended that to convict a person, under Sections 31 (a) and 33 of the said Pondicherry Act, it is the duty of the prosecution to establish all the ingredients of the offence, beyond all reasonable doubts. However, in this case, the seized item is not proved to be an intoxicating item or Indian Made Foreign Liquor by acceptable scientific evidence. In his cross examination, P.W.6 admitted that the seized items were not sent to Chemical lab for analysis.

13. The learned counsel for the respondent, further contended that merely because A1 was found there, it cannot be immediately presumed that he has committed the offence.

14. In support of his submissions, the learned counsel for the respondent cited the following decisions:

- 1) Manickammal, In re (1965 MWN CR. 156)
- 2) Simon and others Vs. State reported in 1996(2) CCR 313

15. I have anxiously considered the rival submissions, perused the impugned judgment and the entire materials on record and also the decisions cited by the learned counsel for the respondent.

16. Now, the question before us is whether the prosecution has established offences under Sections 31 (a) and 33 of the Pondicherry Excise (Amendment Act), 1989 as against A1 beyond all reasonable doubts. Whether the finding of the trial Court, suffers from any legal perversity?

17. A close reading of Sections 31 (a) and 33 of Pondicherry Excise (Amendment Act), 1989 shows that the offences prescribed therein requires certain basic elements viz., the person should be in possession, transportation etc., of an intoxicating item, without any authority, licence, order of the Pondicherry Government. Thus, only on establishing all these elements, the offences stated above would be made out.

18. In this case, P.W.1 has been examined to speak about seizure of the contraband. P.W.'s 2 and 3 are seizure Mahazar witnesses. They have not supported the prosecution. P.W.6, admitted in the cross examination that no record has been seized to establish that the premises in question belongs to the accused. On the contrary, the defense side contended that it belongs to one Achutan and to probabilise their defence, the accused also examined then Municipal Commissioner as D.W.1. In such circumstances, the trial Court has rightly concluded that the prosecution had failed to prove that the premises belong to the accused.

19. The other prosecution version is that when the raid was conducted A1 was standing there. Apart from that, there is no further incriminating materials against him. In Manickammal, In re (1965 MWN CR. 156), this Court held that mere physical presence of a person in the building, without acceptable evidence to connect him with the place will not be an incriminating aspect. Similar situation is before us.

20. One of the main ingredient of Sections 31 (a) and 33 of Pondicherry Excise (Amendment Act), 1989 is that the prosecution should establish that the contraband seized is an intoxicating item.

21. In Simson and ors, Vs. State(1996 (2) CCR 313), it was held as under:

"6. The dictum laid down in the above referred decisions is that the prosecution, in the case of offences under Prohibition Act, must establish through evidence that the bottles contained the prohibited liquor. In other words, the prosecution should establish that the commodity in question comes under one or other of the various items described in the definition of liquor in the Act. The mere affixing of labels on the bottles may not be a proof to hold that the petitioners were found selling the prohibited liquor as defined in the Prohibition Act. Therefore, the conviction and sentence imposed on the petitioners by the Trial Court and confirmed by the first Appellate Court are not correct."

22. P.W.6 admits that the seized liquor bottles were not sent to clinical lab. However, an attempt has been made by the prosecution stating that the analysis report is available but not marked, which is not satisfactory.

23. In the light of the above, the trial Court has rightly held that the prosecution has not established its case beyond all reasonable doubts.

24. In view of the forgoing reasons, this appeal fails and hereby dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1.The Judicial Magistrate (Sub Judge), Mahe
Puducherry.

2.The Excise Inspector, Mahe.

3.The Public Prosecutor,
(Puducherry) High Court, madras.

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Cr1.R.C.No.293 of 2007
and
M.P.No.1 of 2011



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