

Bail Slip

The Petitioner/Accused, namely Vel was enlarged on bail and in by the order dated 17.04.2012 made in MP.NO.1/12 IN CRL RC.NO.374/2012 on the file of this Hon'ble court High Court filed against the order dated 25.11.2011 made in CRL A No.6 of 2011 on the file of the Principal District and sessions Judge, Perambalur.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.02.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.374 of 2012
and M.P.No.1 of 2012

Vel

... Petitioner/Accused

Vs.

The Inspector of Police,
PEW. Perambalur
Perambalur District.
Crime No.571 of 2003

... Respondent/Complainant

Prayer: Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to call for the records on the file of the learned Principal District and Sessions Judge, Perambalur District and Sessions Judge, Perambalur, Perambalur District made in Crl.Appeal No.6 of 2011 dated 25.11.2011 concerned in S.C.No.183 of 2005 on the file of the learned Chief Judicial Magistrate, Perambalur, Perambalur District Judgment dated 11.03.2011 and set aside the same.

For Petitioner : Mr.J.Milton Arul Rajendran
For Respondent : Mr.T.Shanmuga Rajeswaran, GA

O R D E R

The Revision petitioner is the sole accused was found guilty for an offence under Section 4(1)(a) r/w 4(1-A) of Tamil Nadu Prohibition Act.

2. The brief facts of the case is that on 15.04.2003, PW.3 the Inspector of Police attached to Prohibition Enforcement Wing, Perambalur District along with PW.1 were on surveillance near sugar cane field situated on the north side of Pallakalingarayar Village. When the accused saw the police

team tried to flee from the place. He was apprehended by the raiding team since he was in possession of 25 liters of illicit arrack in mud pot. After drawing the sample of 500 ml, the raiding team has destroyed the remaining arrack and the earthen pot. The accused was arrested, sample was sent for chemical analysis. The analyst report Ex.P.7 reveal that the arrack contains 'atropine' and tartaric acid.

3. Before the trial Court the prosecution has examined 4 witnesses and marked 7 Exhibits and 1 material object. The Court below considering the evidence placed by the prosecution and held the accused guilty of the offence under Section 4(1) (a) r/w4(1-A) of Tamil Nadu Prohibition Act. Sentenced him to undergo 1 year Rigorous Imprisonment and fine of Rs.5000/-; in default 3 months Simple Imprisonment.

4. The learned counsel for the revision petitioner herein would submit that the prosecution version has not been corroborated by any independent witnesses. The reason for destroying the illicit arrack and the container without forwarding the same to the Court, cause doubt about the prosecution version. The Court below failed to consider that there was no one in this spot except the accused to probablise, the theory that the accused was in possession of the illicit arrack and was intend to sell to the third party. When there is no allegations of selling the contraband or probability of consumption Section 4(1) (a) will not attract.

5. Per contra, the learned Government Advocate representing the State would submit that the raiding team of prohibition wing had found the accused in a secluded place with mud pot. His conduct of fleeing from the scene, on noticing the raiding team cause suspicious. Therefore, the raiding team apprehended the accused who was found in possession of arrack in the mud pot. The sample drawn from arrack was sent to chemical analysis who has given the chemical Examination report that it contains atropine.

6. PW.1 was the informant in this case PW.3 is the Investigating Officer. PW.1 is the Head Constable and was part of the raiding team. They came to the station and informed about the seizure and arrest. Based on his information, FIR Ex.P.5 was registered and investigated by PW.4. The chemical analyst was conducted examination of the sample and she was examined as PW.2, her report attached as Ex.P.4. In her letter Ex.P.7, she has opined that if the illicit arrack mixed with atropine and consumed it will even lead to death. Therefore, the learned Government Advocate would submit that the prosecution witnesses have probablise beyond doubt that the accused was in possession of the contraband and consumption of the said contraband has become death.

7. Heard both the counsel. Perused the records.

<https://hcservices.ecourts.gov.in/hcservices/> 8. The Seizure Mahazar Ex.P.1 and the Destruction

Mahazar Ex.P.2 together indicates that the sample sent for analysis was drawn from the arrack possessed by the accused. After drawing the sample, the other materials were destroyed. Ex.P.4 and Ex.P.7 as spoken by PW.2 reveals that the sample sent by the respondent through the Court contained atropine, a poisonous substance, if consumed may lead to death. Though it is contended that the seizure took place in a secluded remote village and there was no other person in that place, 25 liters of arrack mixed with atropine cannot be presumed to be held in possession by the accused for his personal consumption. It is not necessary that in all cases prohibition wing will stumble upon the manufacturing materials used for brewing arrack. Therefore, the contention of the learned counsel for the revision petitioner that, absence of independent witnesses and absence of buyer will not enure exemption to the accused from the offence under Sections 4(1)(a) r/w4(1-A) of Tamil Nadu Prohibition Act.

9. The learned counsel for the revision petitioner would further contend that the revision petitioner has no bad antecedent. He is not a bootlegger. Rigorous Imprisonment for 1 year is not proportionate to the offence. The learned Government Advocate has no contra material to disprove the submission made by the learned counsel appearing for the revision petitioner regarding the antecedent of the revision petition.

10. In the light of the above facts, this Court is of the opinion that the period of imprisonment imposed on the revision petitioner by the Courts below has to be modified. The conviction of the accused for the offence under Section 4(1)(a) r/w4(1-A) of Tamil Nadu Prohibition Act is confirmed. The sentence imposed on the appellant to undergo Rigorous Imprisonment for one year is reduced for a period of 3 months and fine of Rs.500/-; in default Simple Imprisonment for a period of 2 weeks.

11. In the result, this revision petition is partly allowed. Consequently, the connected miscellaneous petition is also closed.

sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rpl

To

1. The Judicial Magistrate, Perambalur.

2.The Chief Judicial Magistrate, Perambalur, Perambalur District

3.The Principal District and sessions Judge, Perambalur.

4.The Inspector of Police,
PEW. Perambalur
Perambalur District.

5.The Public Prosecutor, High Court ,Madras.

6.The Section Officer,
Criminal Section,
High Court, Madras.

7.The Superintendent of Police, Perambalur District.

+1cc to Mr.M.R.Elavarasan, Advocate SR.No. 18497

Crl.R.C.No.374 of 2012

A.SK(03/04/2019)



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