IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 04TH DAY OF DECEMBER 2020 / 13TH AGRAHAYANA, 1942

CRL.A.No.778 OF 2006

AGAINST THE ORDER/JUDGMENT IN SC 241/2005 DATED 07-03-2006 OF ADDITIONAL SESSIONS JUDGE (ADHOC)-II, THALASSERY

APPELLANT/ACCUSED:

EDAN BABU
S/O KELAPPAN,EDAN HOUSE,
VEKKALAM, ERAYIKOLLI.

BY ADV. SRI.P.V.SURENDRANATH

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENT BY PUBLIC PROSECUTOR,,
HIGH COURT OF KERALA, ERNAKULAM.

BY SRI.K.B.UDAYAKUMAR, SR.PP

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 4th day of December 2020

Appellant is the accused in S.C. No 241 of 2005 on the file of the Additional Sessions Judge, (Adhoc) II, Thalassery. The above case is charge sheeted by the Sub Inspector of Police, Peravoor Police Station, alleging offence punishable under Section 55 (a) of the Abkari Act.

2. The prosecution case is that, on 23-11-2003 at 6.20.p.m.,the accused was found in possession of 4.5 litres of arrack in a 5 litre cannas, in house No. KP V/161, near Erayikolli Town.

3. To substantiate the case, the prosecution examined PW1 to PW4. Exts. P1 to P7 are the documents marked on the side of the prosecution. MO1 is the material object.

4. After going through the evidence and documents, the trial Court found that, the accused committed the offence punishable under Section 55 (a) of the Abkari Act. Accused is sentenced to undergo rigorous imprisonment for one year and to

pay a fine of Rs. 1,00,000/- In default of payment of fine, the accused is directed to undergo rigorous imprisonment for a period of one month. Aggrieved by the conviction and sentence, this Criminal Appeal is filed.

5. Heard the learned counsel for the appellant and learned Public Prosecutor.

6. The learned counsel for the appellant submitted that, the alleged seizure of the contraband article was on 23-11-2003. But the property was produced before the court only on 28-11-2003. There is absolutely no explanation for the same. When witnesses were cross-examined, the detecting officer stated that, he kept the property in his possession, because he wants to show the same to the Investigating Officer. The learned counsel for the appellant submitted that, that is not an explanation when the statute mandate that the property should be produced forthwith before the Court.

7. The learned Public Prosecutor submitted that, there is oral and documentary evidence to prove this case and there is nothing interfere with the conviction and sentence imposed by the trial Court.

8. The point for consideration in this case is whether the appellant committed the offence punishable under Section 55(a) of the Abkari Act,

9. Admitted prosecution case is that, the contraband articles were seized from the possession of the accused on 23-11-2003. Ext.P3 is the property list. It is clear from Ext.P3 property list, that the property reached the court only on 28-11-2003. The explanation given by the Detecting Officer is that he wants to show the same to the Investigating Officer. I cannot accept the above explanation. When the statute mandate that the property seized to be forwarded to the court forthwith, the Detecting Officer has no business to keep the property in his custody for showing the same to the Investigating Officer. There is a delay of 5 days in producing the property before the court. I think, on that single ground, the appellant is entitled the benefit of doubt.

10. This point is also considered by this Court in ***Sukumaran v. State of Kerala (2019(3) KLT 920), Ravi v. State-Sub Inspector of Police, Meppadi (2018(5) KHC 352) and Vikraman v. State of Kerala (2018(1) KLT 822).***

Relevant portion of the judgment in Ravi's case (supra) is extracted hereunder:

> "8. In order to support the argument, the learned counsel for the appellant cited the ruling in Ramankutty v. Excise Inspector, Chelannur Range, 2013(3) KHC 308 : 2013(3) KLJ 434 : ILR 2013 (3) Ker. 535 : 2013(3) KLT SN 83 wherein it is held that 'in the absence of satisfactory explanation by the prosecution showing the cause of delay, even delay of one day is fatal to the prosecution and therefore, the accused is entitled to the benefit of doubt.
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> 9. In the instant case, there is a delay of four days in producing the contraband articles before the Court. According to the evidence of PW4, it was kept under his safe custody. But, he has to explain that these contraband articles were produced before the Court with tamper proof. Moreover, Ext.P6 is the copy of the forwarding note. It does not contain the seal, which was alleged to have affixed on the sample. So, without verifying the sample seal, the Court cannot act upon Ext.P6 copy of the forwarding note."

11. In the light of the above discussions, I think, the appellant is entitled to the benefit of doubt.

12. Hence, this Criminal Appeal is allowed. The conviction and sentence imposed on the appellant as per the judgment dated 07.03.2006 in S.C. No. 241 of 2005 on the file of the Additional Sessions Judge (Adhoc-II), Thalassery is set aside.

The appellant is set at liberty. Bail bond, if any, executed by the appellant is cancelled.

Sd/-

P.V.KUNHIKRISHNAN

JUDGE

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