

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.464 OF 2020
(@ SPECIAL LEAVE PETITION (CRL.)NO. 2337 OF 2020)

K. VELAYUDHAN

...APPELLANT(S)

VERSUS

EXCISE INSPECTOR KASARGOD EXCISE RANGE & ANR.

...RESPONDENT(S)

O R D E R

Leave granted.

2. This appeal arises out of the final judgment dated 19.11.2019 in Criminal Appeal No. 1121 of 2006 passed by the High Court of Kerala at Ernakulam whereby the High Court has affirmed the conviction of the appellant under Section 55(a) of the Abkari Act and also the sentence of imprisonment of four years and fine amount of Rs.1,00,000/- (Rupees one lakh) imposed upon the appellant.

3. Briefly stated case of the prosecution is that on 27.12.2001 at about 5.30 p.m. PW-1, the Preventive Officer attached to the Kasaragod Excise Range together with PW-2 - Excise Guard while on patrol duty, saw the accused coming with M01 plastic bag in his hand along the Cherkala-Bovikanam old road. PW-1 and PW-2 intercepted the appellant-accused in the presence of PW-3 and PW-4, the independent witnesses. Inspection of the bag revealed that the accused was carrying 49 packets of Karnataka made arrack containing 100 ml. each. The accused was arrested vide Ex.P1 arrest memo . The arrack was collected and the sample was taken and Ex.P3 seizure

mahazar prepared in the presence of independent witnesses. The case was registered as Crime No. 53/2000 of Kasaragod Excise Range against the accused under Section 55(a) of the Abkari Act and the accused was arrested. As per Ex.P8 Chemical Analysis Report, the sample contained ethyl alcohol. PW-6, the Excise Inspector of Kasaragod Excise Range completed the investigation and filed the charge-sheet against the accused which was taken on file as CP.No. 172/2002 on the file of the Judicial First Class Magistrate Court, Kasaragod and the case was committed to the Sessions Court, Kasaragod.

4. To bring home the guilt of the accused, the prosecution has examined PWs 1 to 6 and marked Ex. P1 to P8 and MOs 1 to 3 series. PWs-3 and 4, the independent witnesses did not support the prosecution case and they were declared as hostile. Based upon evidence of PW-1 and PW-2 and Ex.P8 Chemical Analysis Report, the Sessions Court convicted the appellant-accused under Section 55(a) of the Abkari Act and sentenced him to undergo imprisonment for a period of four years and to pay a fine amount of Rs. 1,00,000/-. In appeal preferred by the appellant, the High Court has affirmed the conviction and the sentence of imprisonment imposed upon the appellant and the fine amount. Being aggrieved, the appellant-accused has preferred this appeal.

5. We have heard Mr. Sureshan P. learned counsel appearing on behalf of the appellant and Mr. C.K. Sasi, learned counsel appearing on behalf of the respondent and perused the impugned judgment and other materials on record.

6. PW-1 the Preventive Officer attached to the Kasaragod Excise

Range and PW-2, an Excise Guard, have consistently spoken about the occurrence and that the accused was found in possession of 49 packets of Karnataka made arrack containing 100 ml each. As per Ex.P8, Chemical Analysis Report, the sample contained ethyl alcohol. As pointed out by the Trial Court, the evidence of PW-1 and PW-2 is cogent and there is nothing to doubt their version and Ex.P8 - Chemical Analysis Report. Even though PW-3 and PW -4, the independent witnesses have turned hostile, that would not in any way affect the version of PW-1 and PW-2 whose evidence is supported by Ex.P3 seizure mahazar and Ex.P8 Chemical Analysis Report.

7. In view of the concurrent findings recorded by the Courts below, we do not find any good ground warranting interference with the verdict of conviction of the appellant-accused. So far as the sentence of imprisonment is concerned, learned counsel appearing on behalf of the appellant submitted that the occurrence was of the year 2001 and prayed for leniency.

8. For the offences punishable under Section 55(a) transportation, transit or possession of the liquor and other offences, Section 55(1)(i) stipulates the punishment of ten years and with fine which shall not be less than rupees one lakh. The appellant has surrendered himself on 03.03.2020 and is undergoing the sentence. In the pre-trial stage, the appellant is said to have undergone sentence of imprisonment of a period of about one month. Considering the facts and circumstances of the case and in the interest of justice, the sentence of imprisonment of four years imposed upon the appellant is reduced to six months. The fine amount of Rs.1,00,000/- (Rupees one lakh) is confirmed.

9. In the result, the conviction of the appellant under Section 55(a) of the Abkari Act is confirmed. The sentence of imprisonment of four years is reduced to six months inclusive of period which the appellant has already undergone both in the pre-trial stage and in the post conviction stage. In view of above, the appeal is partly allowed.

10. The fine amount of Rs.1,00,000/- (Rupees one lakh) imposed upon the appellant is confirmed. Four weeks' time is granted to the appellant to pay the fine amount of Rs.1,00,000/- (Rupees one lakh) if he has not paid so far. In case, if the appellant has not paid the fine amount of Rs.1,00,000/- (Rupees one lakh), he has to undergo the default sentence of six months as directed by the Courts below.

.....J.
[R. BANUMATHI]

.....J.
[INDU MALHOTRA]

NEW DELHI
10TH JUNE, 2020

.....J.
[ANIRUDDHA BOSE]

ITEM NO.14

Virtual Court 5

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s). 2337/2020
(Arising out of impugned final judgment and order dated 19-11-2019
in CRLA No. 1121/2006 passed by the High Court Of Kerala At
Ernakulam)

K. VELAYUDHAN

Petitioner(s)

VERSUS

EXCISE INSPECTOR KASARGOD EXCISE RANGE & ANR. Respondent(s)
(FOR ADMISSION and I.R. and IA No.28770/2020-EXEMPTION FROM FILING
O.T.)

Date : 10-06-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI
HON'BLE MS. JUSTICE INDU MALHOTRA
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Petitioner(s) Mr. Sureshan P., AOR

For Respondent(s) Mr. C.K. Sasi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

We have heard Mr. Sureshan P. learned counsel appearing on
behalf of the appellant as well as Mr. C.K. Sasi, learned counsel
for the respondent.

The appeal is partly allowed in terms of the signed order.

Pending application(s), if any, shall also stand disposed of.

(MADHU BALA)

AR-CUM-PS

(Signed order is placed on the file)

(BEENA JOLLY)

BRANCH OFFICER