

A RAVEENDRAN K & ANR,
v.
EXCISE INSPECTOR VADAKARA & ANR.
(Criminal Appeal Nos. 1263 of 2001)

OCTOBER 21, 2008

B [DR. ARIJIT PASAYAT, P. SATHASIVAM AND AFTAB
ALAM, JJ]

Kerala Abkari Act, 1967:

C *Ss, 57A(1)(iii) and (5) – Sale of illicit liquor – HELD: Burden of proof is on the accused – Even if the role of Distillery was in question, that would not absolve the accused of culpability under Act – Conviction and sentence upheld – Evidence.*

D The appellants were convicted and sentenced by the trial court u/s 57A(iii) of the Kerala Abkari Act, 1967 to rigorous imprisonment for one year and to pay a fine of Rs. 10,000/-. The appellate court as also the High Court in revision petition upheld the order of the trial court.

E In the instant appeals, filed by the accused, it was contended for the appellants that the liquor in question was procured from a particular distillery against which cases were instituted and it was found that role of the said distillery in supply of illicit liquor could not be ruled
F out; and that it was not the case of the prosecution that the accused licensee had got the liquor in question from any other source. The stand of the State was that, burden of proof in terms of s.57-A was on the accused.

Dismissing the appeals, the Court

G HELD: The burden of proof is on the licensee as is evident from sub Section (5) of Section 57A of the Kerala Abkari Act, 1967. Even if it is accepted that the distillery had any role to play, that does not absolve the appellants

from culpability under the Act. It is to be noted that while the appellants were selling the liquor in bottle they got it from the said distillery admittedly in barrels. Therefore, the stand of the appellants that the liquor was sold in the same form is not correct. In view of the factual position, the appeal so far as appellant No. 1 in each case is concerned, stands dismissed. The appeal stands abated as regards appellant No. 2 i.e. the licensee in each case because of his death. [para 5-6] (979-A, B, C)

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 1263 of 2001

From the final Judgment and Order dated 30.5.2001 of the High Court of Kerala at Ernakulam in Criminal Rev. Pet. No. 558 of 2000 (B)

WITH

Criminal Appeal Nos. 1264-1265 and 1266 of 2001

K. Rajeev for the Appellants.

G. Prakash for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in these appeals is to the judgment of a learned Single Judge of the Kerala High Court. Before the High Court Criminal Revision Petitions were filed questioning correctness of the judgment passed by learned Sessions Judge Kozhikode upholding the conviction of the revision petitioners for offence punishable under Section 57A (iii) of the Abkari Act, 1967, described as (Act 1 of 1077) because the same was passed by the then Maharaja of Cochin on the 5th day of August, 1902 corresponding to the 31st day of Karkadagom 1077 and was extended to the whole of Kerala as per Act 10 of 1967. Each was convicted by learned Assistant Sessions Judge, Vadakara and sentenced to rigorous imprisonment for one year and to pay a fine of Rs.10,000/- each with default stipulation. Lakshmanan N., the revisional petitioner

A No. 2 in two of the revision petitions before the High Court and the petitioner in one of the petitions was the licensee of arrack shops bearing Nos. 1 to 16 of Vadakara Range. Preventive officer PW 1 attached to the Vadakara Excise Range along with Excise Guards inspected the godowns, and arrack shops
B of the licensee on 19.12.1988 and took samples for chemical examination. The samples were taken from the stocks of 6520 litres of arrack kept in 65 barrels, in the presence of the appellant No. 1. One of the samples collected from the godown was
C of chemical examination as per the regional Chemical Examination Laboratory, Kozhikode, revealed the presence of Methyle alcohol, a noxious substance, the consumption of which is injurious to health. On the same day at another godown sample
D was collected where appellant Mohanan in Criminal Appeal No. 1265 of 2001 was the manager. During the pendency of the appeals before this Court, the licensee died. The samples were taken in three bottles in each case. Samples labeled as A & B were taken by the officer while bottle C was given to the salesman/manager as the case may be. Samples labeled A were sent for chemical analysis and the report is dated 25.1.1989.
E The presence of noxious substance was found. On 19.5.1989 the complaint was filed.

F 2. The stand of the accused persons was that the liquor in question was procured from the distillery Chittore Co-operative Sugar Mill (in short the 'Chiccopse'). It was stated that earlier cases were instituted against Chiccopse and it was found that the role of Chiccopse in the supply of illicit liquor cannot be ruled out. Various documents were relied upon for this purpose. The courts below did not accept the stand and found the accused persons guilty and sentenced them as aforesaid.
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H 3. In support of the appeals learned counsel for the appellant submitted that it is not the case of the prosecution that the licensee had got the liquor in question from any source other than Chiccopse. It was submitted that the First Information Report was also lodged on the basis of the Board of Revenue's

letter dated 13.1.1999 and the charge sheet has also been filed against officials of Chiccopse. A

4. Learned counsel for the State on the other hand submitted that burden of proof under Section 57(1) or (2) of Section 57A is on the licensee to prove that he has not mixed or permitted to be mixed or as the case may be omitted to take a reasonable precaution to prevent the mixing of any substance referred to in the provision with any liquor or intoxicating drug. Similar is the provision in relation to possession of liquor or intoxicating drugs with which some other substance is mixed. Sections 57 and 57A of the Act read as follows: B
C

"57. For adulteration, etc., by licensed vendor or manufacturer:- Whoever being the holder of a licence for the sale or manufacture of liquor or of any intoxicating drug under this Act, D

(a) mixes or permits to be mixed with the liquor or intoxicating drug, sold or manufactured by him, any drug, other than a noxious drug] or any foreign ingredient likely to add to its actual or apparent intoxicating quality or strength, or any article prohibited³[other than an article which the Government shall deem to be noxious] by any rule made under section 29, clause (k), when such admixture shall not amount to the offence of adulteration under Section 272 of the Indian Penal Code(Substituted for the words and figures "Section 248 of the Cochin Penal Code" by Section 32(a) of Act 10 of 1967; or E
F

(b) sells or keeps or exposes for sale as foreign liquor, liquor which he knows or has reason to believe to be country liquor; or G

(c) marks the cork of any bottle, case, package or other receptacle containing country liquor, or uses any bottle, case, package or other receptacle containing country liquor with any mark thereon on the cork H

A thereof with the intention of causing it to be believed
that such bottle, case, package or other receptacle
contains foreign liquor when such act shall not amount
to the offence of '[applying a false trade mark under
B section 78 of the Trade and Merchandise Marks Act,
1958]; or

(d) sells or keeps or exposes for sale any country liquor
in a bottle, case, package or other receptacle with
any mark thereon or on the cork thereof with the
intention of causing it to be believed that such bottle,
C case, package or other receptacle contains foreign
liquor, when such act shall not amount to the offence
of selling goods to which a false trade mark or false
trade description is applied under Section 79 of the
Trade and Merchandise Marks Act, 1958(substituted
D for the words and figures "marked with a counterfeit
trade mark under Section 466 of the Cochin Penal
Code by Section 32 (c) of Act 10 of 1967) ;

shall on conviction before a competent court, be punished
for each such offence, with imprisonment for a term which
E may extend to five years, or with fine which may extend to
fifty thousand rupees, or with both (The words "on
conviction before a Magistrate, be punished for each such
offence, [with imprisonment for a term which may extend
to six months, or with fine which may extend to three
F thousand rupees, or with both." substituted by Act 16 of
1997, w.e.f. 3-6-1997).

*57A. For adulteration of liquor or intoxicating drug with
noxious substances, etc:-* (1) Whoever mixes or permits
to be mixed any noxious substance or any substance which
G is likely to endanger human life or to cause grievous hurt
to human beings, with any liquor or intoxicating drug shall,
on conviction, be punishable

(i) if, as a result of such act, grievous hurt is caused to
H any person, with imprisonment for a term which shall

- not be less than two years but which may extend to imprisonment for life, and with fine which may extend to fifty thousand rupees; A
- (ii) if, as a result of such act, death is caused to any person, with death or imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and with fine which may extend to fifty thousand rupees; B
- (iii) in any other case, with imprisonment for a term which shall not be less than one year, but which may extend to ten years, and with fine which may extend to twenty-five thousand rupees. C

Explanation:- For the purpose of this section and section 57B, the expression "grievous hurt" shall have the same meaning as in section 320 of the Indian Penal Code, 1860 (Central Act 45 of 1860). D

(2) Whoever omits to take reasonable precautions to prevent the mixing of any noxious substance or any substance which is likely to endanger human life or to cause grievous hurt to human beings, with any liquor or intoxicating drug shall, on conviction, be punishable, E

- (i) if as a result of such omission, grievous hurt is caused to any person, with imprisonment for a term which shall not be less than two years but which may extend to imprisonment for life, and with fine which may extend to fifty thousand rupees; F
- (ii) if as a result of such omission, death is caused to any person, with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and with fine which may extend to fifty thousand rupees; G
- (iii) in any other case, with imprisonment for a term which shall not be less than one year but which may extend H

A to ten years, and with fine which may extend to twenty-five thousand rupees.

B (3) Whoever possesses any liquor or intoxicating drug in which any substance referred to in sub-section (1) is mixed, knowing that such substance is mixed with such liquor or intoxicating drug shall, on conviction, be punishable with imprisonment for a term which shall not be less than one year but which may extend to ten years, and with fine which may extend to twenty-five thousand rupees.

C (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), no person accused or convicted of an offence under subsection (1) or sub-section (3) shall, if in custody, be released on bail or on his own bond, unless

D (a) the prosecution has been given an opportunity to oppose the application such release, and
(b) where the prosecution opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence.

E (5) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872)-

F (a) where a person is prosecuted for an offence under sub-section (1) or s section (2), the burden of proving that he has not mixed or permitted to mixed or, as the case may be, omitted to take reasonable precautions to prevent the mixing of, any substance referred to in that sub-section with any liquor, intoxicating drug shall be on him;

G (b) where a person is prosecuted for an offence under sub-section (3) for being in possession of any liquor or intoxicating drug in which any substance refers to in sub-section (1) is mixed, the burden of proving that he did not know that such substance was mixed with such liquor or intoxicating drug shall be on him.
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5. As rightly submitted by learned counsel for the State, A
the burden of proof is on the licensee as is evident from sub
Section (5) of Section 57A. Even if it is accepted for the sake
of argument that Chiccopse had any role to play, that does not
absolve the appellants from culpability under the Act. It is to be
noted that while the appellants were selling the liquor in bottle B
they got it from Chiccopse admittedly in barrels. Therefore the
stand of the appellants that the liquor was sold in the same form
is not correct.

6. In view of the factual position indicated above, the ap- C
peal so far as the appellant No. 1 in each case is concerned,
stands dismissed, while appeal stands abated so far as the
appellant No. 2 i.e. the licensee in each case because of his
death. The appellant No. 1 in each case who were released on
bail pursuant to order dated 7.12.2001 shall surrender to cus-
tody forthwith to serve remainder of sentence. D

R.P.

Appeals dismissed.