

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

TUESDAY, THE 07TH DAY OF JULY 2020 / 16TH ASHADHA, 1942

Crl.Rev.Pet.No.2792 OF 2009

AGAINST THE CONVICTION AND SENTENCE IMPOSED ON THE APPELLANT
VIDE JUDGMENT DATED 13.07.2009 IN CRL.APPEAL NO.56 OF 2008 ON
THE FILES OF THE ADDITIONAL SESSIONS COURT, PATHANAMTHITTA AND
JUDGMENT DATED 19.02.2008 IN S.C.NO.154 OF 2002 ON THE FILES OF
THE ASSISTANT SESSINS COURT, THIRUVALLA

PETITIONER/APPELLANT NO.1/ACCUSED NO.2:

M.R.BALAKRISHNAN
PADINJARECHIRA VEEDU, CHENNAMKERI MURI,, KANIKARY
VILLAGE, KUTTANADU TALUK.

BY ADVS.
SRI.C.S.MANU
SRI.ABHILASH AKBAR
SRI.P.CHANDRASEKHARAN PILLAI (VENNELA)
SRI.S.K.PREMRAJ
SRI.K.N.RAVEENDRAN
SRI.T.B.SIVAPRASAD
SRI.K.THAVAMONY

RESPONDENT/COMPLAINANT/STATE:

STATE OF KERALA REPRESENTED BY
THE EXCISE INSPECTOR, THIRUVALLA EXCISE RANGE,,
NOTICE TO WHOM MAY BE SERVED ON THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,, ERNAKULAM.

SRI SANTHOSH PETER-SR PP

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 03.07.2020, THE COURT ON 07.07.2020 PASSED THE FOLLOWING:

R.NARAYANA PISHARADI, J

Crl.R.P.No.2792 of 2009

Dated this the 7th day of July, 2020

ORDER

Does a letter given or sent to a police officer by a person after the commencement of investigation of an offence come within the interdict under Section 162(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code')? Answer to this question would decide the fate of this revision petition.

2. On 15.08.1998, the Excise Circle inspector of Excise Enforcement and Anti-narcotic Special Squad, Pathanamthitta conducted search of toddy shop No. 24/98-99 of Thiruvalla Excise

Range. He seized one and a half litres of rectified spirit which was kept in the toddy shop for sale. The first accused was the salesman and the second and the third accused were the licensees of the toddy shop. They have committed an offence punishable under Section 55(i) of the Abkari Act, 1077 (for short 'the Act'). This, in short, is the substance of the prosecution case.

3. The three accused faced trial. The prosecution examined PW1 to PW6 and marked Exts.P1 to P9 documents and MO1 to MO3 material objects. No evidence was adduced by the accused.

4. The trial court found all the three accused guilty of the offence punishable under Section 55(i) of the Act and convicted them thereunder and sentenced them to undergo rigorous imprisonment for a period of one year each and to pay a fine of Rs.1,00,000/- each and in default of payment of fine, to undergo simple imprisonment for a period of six months each.

5. The second and the third accused filed Crl.A.No.56/2008 and the first accused filed Crl.A.No.70/2008 before the Court of Session, Pathanamthitta challenging the order of conviction and sentence passed against them by the trial court. The appellate

court allowed the appeals filed by the first and the third accused and acquitted them. The appellate court confirmed the conviction as well as the sentence against the second accused and dismissed the appeal filed by him.

6. The concurrent verdicts of guilty, conviction and sentence made against him by the courts below are challenged by the second accused in this revision petition.

7. Heard. Perused the records.

8. The trial court as well as the appellate court has relied upon the contents of Ext.P7 document to find that the petitioner was one of the licensees of the toddy shop from which the spirit was seized. In fact, this is the only evidence adduced by the prosecution to prove that the second accused was the licensee of the toddy shop during the relevant period. The trial court has mistakenly treated this document as the licence issued for conducting the toddy shop.

9. Ext.P7 is the letter dated 14.04.2000 sent or given by the Excise Circle Inspector, Thiruvalla to the Excise Inspector (PW4) who conducted the investigation of the case. The names

of the licensees of the toddy shop for the year 1998-99 are mentioned in Ext.P7 letter. This document was marked through PW4. He has given evidence that it was in response to the request made by him on 05.04.2000 that Ext.P7 letter was given to him. Ext.P7 also refers to the letter dated 05.04.2000 sent by PW4 to the Excise Circle Inspector for furnishing the particulars of the licensees of the toddy shop.

10. The Excise Circle Inspector who sent Ext.P7 letter was not examined. The letter was marked through PW4 who conducted the investigation of the case. Therefore, the accused had no opportunity to cross examine the author of that document with regard to the contents therein.

11. Section 162(1) of the Code provides that, no statement made by any person to a police officer in the course of investigation, shall, if reduced into writing, be signed by the person making it. It further states that such a statement or any record thereof shall not be used for any purpose at any enquiry or trial in respect of any offence under investigation at the time when such statement was made except as provided therein. The

proviso to Section 162(1) of the Code permits use of such statement for the purpose of contradicting a witness in the manner provided by Section 145 of the Indian Evidence Act. Section 162(2) of the Code states that nothing in the section shall be deemed to apply to any statement falling under clause (1) of Section 32 of the Indian Evidence Act or to affect the provisions of Section 27 of that Act.

12. The question arises whether the bar or prohibition under Section 162(1) of the Code would apply to information collected from a person by a police officer during the course of the investigation through a letter or other written communication made to him by such person. Dealing with this question, in **Kali Ram v. State of Himachal Pradesh : AIR 1973 SC 2773**, the Supreme Court has held as follows:

"Bare perusal of the provision reproduced above makes it plain that the statement made by any person to a police officer in the course of an investigation cannot be used for any purpose except for the purpose of contradicting a witness, as mentioned in the proviso to sub-section (1), or for

the purposes mentioned in sub-section (2). The prohibition contained in the section relates to all statements made during the course of an investigation. Letter PEEE which was addressed by Sahi Ram to Station House Officer was in the nature of narration of what, according to Sahi Ram, he had been told by the accused. Such a letter, in our opinion, would constitute statement for the purpose of Section 162 of the Code of Criminal Procedure. The prohibition relating to the use of a statement made to a police officer during the course of an investigation cannot be set at naught by the police officer not himself recording the statement of a person but having it in the form of a communication addressed by the person concerned to the police officer. If a statement made by a person to a police officer in the course of an investigation is inadmissible, except for the purposes mentioned in Section 162 the same would be true of a letter containing narration of facts addressed by a person to a police officer during the course of an investigation. It is not permissible to circumvent the prohibition contained in Section 162 by the investigating officer obtaining a written statement of a person instead of the investigating officer himself recording that statement”.

(emphasis supplied)

13. In **Vinod Chaturvedi v. State of Madhya Pradesh : AIR 1984 SC 911**, the father of the deceased person had sent a letter to the Superintendent of Police, after the registration of the first information report. The High Court heavily relied upon this letter to enter conviction against the accused. But, the Apex Court held as follows:

"The High Court fell into a clear error in relying on the two letters marked as Exhibit P1 and Exhibit P9. Exhibit P1 was a letter of P.W 1. Sunderlal to the Superintendent of Police. Admittedly by 29-4-73 when this letter said to have been written investigation had started on the basis of the first information report and therefore, a letter written by P.W. 1 who stood in the place of the prosecutor would not at all be admissible in evidence. No detailed reasons are warranted for this conclusion. The position is clearly covered by a decision of this Court in the case of Kali Ram v. State of Himachal Pradesh. "

14. In **Rajeevan v. Superintendent of Police : 2011 (1) KHC 738**, this Court had held that, the letters addressed to the investigating officer by the Executive Officers of the Panchayaths

giving information regarding the functioning of a firm and the licence issued to it, were hit by Section 162 of the Code.

15. In the instant case, the investigation of the case was conducted by PW4 Excise Inspector. After the amendment of Section 50 of the Act with effect from 03.06.1997, Abkari Officers under the Act can only file a final report in accordance with Section 173(2) of the Code and they have to be treated as police officers (See **Joseph v. State of Kerala : 2009 (4) KHC 537**). If that be so, a statement made by a person to an Excise Inspector during the course of investigation has to be excluded from evidence by virtue of Section 162 of the Code (See **Raja Ram Jaiswal v. State of Bihar : AIR 1964 SC 828**).

16. In the above circumstances, Ext.P7 letter has to be excluded from evidence. Then, there is no evidence to find that the petitioner was the licensee of the toddy shop during the relevant period.

17. The result is that conviction of the petitioner under Section 55(i) of the Abkari Act cannot be sustained. Accordingly, the revision petition is allowed and the conviction and sentence

against the petitioner are set aside. The petitioner is found not guilty of the aforesaid offence and he is acquitted.

(sd/-)

R.NARAYANA PISHARADI, JUDGE

jsr

True Copy

PS to Judge