RAJAMANI

v.

STATE OF KERALA

(Criminal Appeal No. 397 of 2013)

MARCH 06, 2013

[T.S. THAKUR AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

Kerala Abkari Act (1 of 1077) – s.55(a) – Conviction under – For illegal trade in liquor – Trial court sentenced the accused to seven years imprisonment and imposed fine of Rs.1 lakh with default clause – High Court reduced the sentence to five years imprisonment and enhanced the amount of fine to Rs.2 lakhs – Notice by Supreme Court limited on the question of sentence – Held: In view of the circumstances of the case that the accused was only a driver of the lorry in which the goods were transported, and the investigating agency did not make any endeavour to expose the racketeers, the sentence of the accused is reduced to three years imprisonment and fine is reduced to Rs.1 lakh.

Appellant-accused, a driver of a lorry was caught carrying contraband and was prosecuted u/s.55 of Kerala Abkari Act (1 of 1077). Trial court convicted the accused and sentenced him to imprisonment of seven years and imposed fine of Rs.1 lakh with default clause. High Court affirmed the conviction but reduced the sentence to five years imprisonment and enhanced the fine to Rs.2 lakhs with default clause. In appeal, this Court issued notice limited to the question of sentence.

Disposing of the appeal, the Court

HELD: 1. The appellant was a driver by profession. The quantity of contraband was thus large. That could

A **and ought to be one of the factors to be taken into consideration while determining the quantum of sentence awarded to him. What was equally important is whether the appellant was the owner of the contraband or had any financial interest in its possession or transportation.** B **There is nothing on record to suggest that the appellant had any such interest. The Investigating Officer ought to have made an endeavour to identify those behind the purchase and transport of the contraband. He should have looked for the consignor and consignee both. Arrest** C **and prosecution of the driver of the lorry in which the goods were being carried can hardly be enough to weed out illegal trade in liquor. So long as the kingpins are not identified and brought to book, the purpose sought to be served by the law prescribing a deterrent punishment** D **cannot be achieved. In matters of illegal trade whether in liquor, drugs or other contrabands, the smaller fish only gets caught while the sharks who flourish in such trade often go scot free. The arrest and prosecution of the carriers of contrabands is in that view mere lip service to** E **the avowed purpose underlying the legislation. [Para 6] [190-D-H]**

2.In the totality of the circumstances and the facts of the cases, the sentence awarded to the appellant is reduced from five years to three years rigorous F **imprisonment and a fine of rupees one lakh. In default of payment of fine the appellant shall suffer imprisonment for a further period of one year. [Para 7] [191-B-C]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal G No. 397 of 2013.

From the Judgment & Order dated 15.03.2012 of the High Court of Kerala at Ernakulam in Crl. A. No. 1345 of 2003.

P.V. Dinesh, Bineesh for the Appellant.

H Jogy Scaria, K.K. Sudhesh for the Respondent.

The Judgment of the Court was delivered by A

T.S. THAKUR, J. 1. Leave granted.

2. The appellant was prosecuted for an offence punishable under Section 55(a) of the Kerala Abkari Act (1 of 1077). He was found guilty by the Trial Court and sentenced to undergo B imprisonment for a period of seven years besides a fine of rupees one lakh. In default of payment a further sentence of one year simple imprisonment was also awarded. The co-accused in the case was, however, acquitted by the Trial Court.

C

3. Aggrieved by the conviction and the sentence awarded to him, the appellant preferred Criminal Appeal No.1345 of 2003 before the High Court of Kerala at Ernakulam. The High Court reappraised the evidence on record and came to the conclusion that the charge framed against the appellant had D been rightly held to be proved by the Trial Court. The conviction recorded against the appellant was accordingly affirmed but the sentence awarded to him reduced from seven years to five years but with an enhanced fine of rupees two lakhs in default of payment whereof the appellant was to undergo a further E imprisonment of two years.

4. When the special leave petition filed by the appellant against the above judgment and order came up for preliminary hearing before this Court on 26th November, 2012, we issued notice to the respondent limited to the question of quantum of F sentence awarded to the appellant. We have accordingly heard learned counsel for the parties on that limited question.

5. Section 55 (a) of the Act makes any contravention of the Act or of any rule made thereunder in regard to "import, G transport, transit or any intoxicating drug" punishable with imprisonment for a term that may extend to ten years and a fine which shall not be less than rupees one lakh. It reads:

"55. ***For Illegal import, etc.*** *– Whoever in contravention of this Act or of any rule made under this Act –* H

A (a) Imports, exports, transports, transits or possesses liquor or any intoxicating drug; or

xxx xxx xxx

shall be punished.-

B

(1) for any offence other than an offence falling under clause (d) or clause (e), with imprisonment for a term which may extend to ten years and with fine which shall not be less than rupees one lakh

C and

xxx xxx xxx"

6. The appellant is a driver by profession. He was found carrying 218 plastic cans. Each one of those cans contained

D 33 litres of spirit. The quantity of contraband was thus very large. That could and ought to be one of the factors to be taken into consideration while determining the quantum of sentence awarded to him. What was equally important is whether the appellant was the owner of the contraband or had any financial

E interest in its possession or transportation. There is nothing on record to suggest that the appellant had any such interest. The Investigating Officer ought to have made an endeavour to identify those behind the purchase and transport of the contraband. He should have looked for the consignor and

F consignee both. That is because arrest and prosecution of the driver of the lorry in which the goods were being carried can hardly be enough to weed out illegal trade in liquor. So long as the kingpins are not identified and brought to book the purpose sought to be served by the law prescribing a deterrent

G punishment cannot be achieved. It is common knowledge that in matters of illegal trade whether in liquor, drugs or other contrabands, the smaller fish only gets caught while the sharks who flourish in such trade often go scot free. The arrest and prosecution of the carriers of contrabands is in that view mere

H lip service to the avowed purpose underlying the legislation. No

reason is forthcoming in the present case why no effort was made by the Investigating Agency to expose the racketeers without whose support and involvement such a big consignment of spirit could not have been purchased nor its transportation arranged.

7. In the totality of the above circumstances and the fact that the petitioner was only a driver of the lorry in which the goods were being transported, we are inclined to reduce the sentence awarded to him from five years to three years rigorous imprisonment and a fine of rupees one lakh. In default of payment of fine the appellant shall suffer imprisonment for a further period of one year. The orders passed by the trial Court and the High Court shall stand modified to the above extent.

8. This appeal is disposed of in the above terms.

K.K.T. Appeal disposed of.