SUPREME COURT OF INDIA

Sasikumar

Vs.

State of Kerala

Crl.A.No.1987 of 2012

(Aftab Alam and Ranjana Prakash Desai JJ.)

04.12.2012

JUDGMENT

AFTAB ALAM, J.

1. Leave granted.

2. The two appellants (who are accused Nos.2 3), along with one Narayanan (accused No.1) have been convicted under Section 8(1) read with 8(2) of the (Kerala) Abkari Act. They were sentenced by the trial court to rigorous imprisonment for three years and a fine of Rs.1,00,000/- with the default sentence of one year rigorous imprisonment. In appeal the High Court, though maintaining the conviction, reduced the sentence to rigorous imprisonment for 18 months and the default sentence for failure to pay the fine, to rigorous imprisonment for a period of six months. The High Court also directed that the accused would be entitled to get the benefit of set off under Section 428 of the Code of Criminal Procedure.

3. According to the prosecution case, on March 12, 2005 at about 11:15 AM the accused were seen coming in an auto-rickshaw bearing registration No.KL-03-F-3146. The auto-rickshaw belonged to and it was being driven by appellant No.2. On seeing the police party, all the three occupants ran away leaving the auto-rickshaw at the spot. On its inspection, the police found two (2) 20 litres cans containing 40 litres of arrack lying inside the auto-rickshaw and, thus, according to

the police, the accused had committed the offence under Section 8(1) of the Abkari Act.

4. The three accused were tried by the Court of the Additional District and Sessions Judge (Ad-hoc) Fast Track Court-I, Pathanamthitta who, by his judgment and order dated June 22, 2010 in Sessions Case No.682/2006 convicted and sentenced them, as noted above.

5. The three accused came to the High Court in two separate appeals, being Criminal Appeal No.1338 of 2010 preferred by the two appellants before this Court and Criminal Appeal No.2198 of 2010 submitted to the High Court as jail appeal on behalf of accused No.1 Narayanan. The High Court disposed of both the appeals by judgment and order dated August 4, 2011. It maintained their conviction but modified and reduced their sentence, as noted above.

6. The accused No.1 Narayanan apparently accepted the judgment of the High Court and has not preferred any special leave petition against the High Court judgment. The other two accused, i.e., the appellants are before this Court in the present appeal.

7. We have heard Mr. R. Basant, learned counsel for the appellants and we have gone through the materials on record. We find that both the trial court and the High Court have meticulously considered the evidences led by the prosecution and have rightly arrived at the conclusion in regard to the appellants' guilt. Insofar as the conviction of the appellants under Section 8(1) of the Abkari Act is concerned, there is no scope for any interference and we uphold the conviction of the appellants as recorded by the trial court and affirmed by the High Court.

8. Mr. Basant, however, urged before us to take a lenient view in regard to the sentence awarded to the appellants.

9. On the question of sentence, the High Court in paragraph 19 of its judgment has made the following observations:-

> "It is relevant to note that at the time of registration of the crime, first accused was at the age of 57 and accused Nos.2 and 3 were at the age of 42 and 48 respectively. Now six years are over. Therefore, first accused will be

at the age of 63, second accused at the age of 48 and third accused at the age of 54. The prosecution has no case that the accused are habitual offenders. Having regard to the above facts and the mitigating circumstances, I am of the view that the substantial sentence imposed against the accused requires reconsideration. Thus, according to me, 18 months rigorous imprisonment will be sufficient to meet the ends of justice. While confirming the sentence of fine, the default sentence can be reduced to six months. In the result, in modification of sentence imposed by the trial court, the accused are sentenced to undergo rigorous imprisonment for 18 months each and to pay fine of Rs.1 lakh each and in default, each of them is directed to undergo simple imprisonment for a period of six months instead of one year rigorous imprisonment ordered by the trial court. The appellants are entitled to get the benefit of set off under Section 428 of Cr.P.C."

10. We agree with the view taken by the High Court.

11. We would like to further observe that from the facts of the case it is evident that the appellants and the other accused in this case are not the real men behind the nefarious trade of illicit intoxicants in the State. From the quantity seized from the possession of the accused and the manner in which it was being carried, it is evident that the three accused were only small time operators in the illicit trade of arrack and though visible, they constitute the weakest link in the chain of illicit trade in arrack. In those circumstances, we think a further reduction of the sentence would be quite in order. We, accordingly, reduce the sentence of imprisonment from 18 months, as awarded by the High Court, to one year and further reduce the sentence in default of payment of fine from six months to fifteen days.

12. Accused No.1, Narayanan is not before this Court presumably on account of poverty, as his appeal to the High Court was also a jail appeal. We find there is no distinction between the case of the appellants and the case of accused No. 1 and, accordingly, extend the relief granted to the two appellants to accused No.1 Narayanan as well.

13. Before parting with the record of the case, we would like to point out that Section 8(2) of the Abkari Act does not fix any upper limit for the fine but lays down that the fine shall not be less than Rs.1,00,000/-. Since the minimum amount of fine prescribed by the law is kept so high, the courts naturally give the default

sentence of imprisonment for a substantially longer period. As noted above, the trial court has given the default sentence of one year which was reduced by the High Court to six months. We may note that in cases where poor people like the appellants who may only be the carrier of the arrack or who may be trying to eke out a living from the illegal trade are caught committing the offence, they are hardly in position to pay the fine of Rs.1,00,000/- and for them the default sentence becomes an additional period of incarceration. In a way, fixing the minimum fine at such a high amount, regardless of the countless possible variables in the commission of the offence under Section 8(1), leads to discrimination in favour of those convicts who have sufficient means to pay the fine and, thus, avoid any default imprisonment and the small fries for whom the default sentence would invariably mean an additional sentence of imprisonment. To our mind, it is desirable to leave the Court free in exercise of judicial discretion in the matter of imposition of fine.

14. In the light of the discussion made above, the appeal is allowed to the limited extent, as directed above.