

Kailash Chandra vs State Of M.P on 30 November, 2007

Author: Arijit Pasayat

Bench: Arijit Pasayat, Tarun Chatterjee, Lokeshwar Singh Panta

CASE NO. :

Appeal (crl.) 1649 of 2007

PETITIONER:

Kailash Chandra

RESPONDENT:

State of M.P.

DATE OF JUDGMENT: 30/11/2007

BENCH:

Dr. ARIJIT PASAYAT & TARUN CHATTERJEE & LOKESHWAR SINGH PANTA

JUDGMENT:

J U D G M E N T CRIMINAL APPEAL NO. 1649 OF 2007 (Arising out of SLP (Crl.) No.3518 of 2006) Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Madhya Pradesh High Court, Indore Bench, dismissing the revision petition filed by the appellant.

3. Background facts in a nutshell are as follows:

On 26.04.1996, in the truck bearing registration No.MOU 9470, Anokhilal Porwal the driver of the appellant was transporting 294 boxes each containing 48 quarters xxx-Rum DryGin, Beer and foreign liquor in the night at about 1.00 A.M. The truck was passing through village Naganghat Meghnagar. The Station House Officer of P.S. Kakanwana received information from the informant about passing of the truck, upon which he stopped the truck at Naganghat Barrier and seized the truck with the stock of foreign liquor. Crime No.62/96 was registered at Kakanwani P.S. under Section 34 of the M.P. Excise Act 1915 (in short 'the Act') and after due investigation, filed the charge-sheet before the learned Judicial Magistrate First Class against the driver Anokhilal Porwal. The truck was and is still owned by the appellant-Kailashchandra. The Trial Court, after completion of the trial, by judgment dated 19.03.2001 convicted the accused and sentenced him to R.I. for one year and a fine of Rs.2,000/-, in default of payment of fine, to suffer further R.I. for two months and also issued show-cause notice to the appellant for confiscation of the truck as per

provision under Section 46 of the Act 1915. The appellant submitted the reply, but the trial court was not satisfied therewith and ordered for confiscation of the truck. Against this order, the appellant Kailashchandra submitted appeal (Cri. A.No. 25/2001) whereby the lower Appellate Court remanded the case back by order dated 29.11.2001 on the ground that Supratdar was not served with the notice for confiscation of the truck personally.

The Trial Court registered Misc. Criminal Case No.34/2000 and again issued show-cause notice to the Supratdar/appellant. The appellant submitted his reply and also got himself examined as well as witness Onkar. Trial Court, again passed the order of confiscation of the truck on 07.03.2000. This order was again challenged by the appellant in Cri. A.No.24/03 by judgment dated 12.09.2003. Against this judgment/order, the appellant Kailashchandra filed Cri.Rev.No. 773/03 before the High Court and the High Court again remanded the case back to the lower Appellate Court on the ground that the lower Appellate Court had not mentioned under which provision of law (whether new or old) the appeal was filed and to decide afresh and also issued direction to the Trial Court to see whether the accused Anokhilal filed any appeal and if any filed, what was the fate of that appeal. The lower Appellate Court, in view of the aforesaid direction issued by the High Court, heard both the parties in detail and decided all the issues.

According to the Trial Court, a Criminal case was registered by the police against accused Anokhilal with regard to illegal transportation of foreign liquor in the truck on 26.04.1996. Therefore, the provision of confiscation of Section 46 of the Act, will apply and the amended provision of Section 47 and 47-A substituted by M.P. Excise Act (Act No. XXII of 2000) which came into force from 04.08.2000, will not apply and final disposal of the criminal case alongwith Section 46 of the Act read with Section 452 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') will apply. The lower Appellate Court did not accept the arguments advanced by the Public Prosecutor that the amended provision of the Act, Section 47-A and B shall apply because the judgment was passed after enforcement of the Amended Act of 2000. The Lower Appellate Court, according to the High Court, had rightly decided this issue because confiscation is a penal provision and, therefore, in a pending matter, prior to amendment, the amended provision will not apply and there is no such specific provision in the Amended Act of 2000, for application of new provision for confiscation of the conveyance and other articles, involved in the offence in a pending case.

4. Before the High Court the stand of the appellant was that he was only the owner of the truck and was not present in the truck at the time of seizure along with illicit liquor. The driver Anokhilal Porwal without his consent and permission took the truck and, therefore, the owner could not be penalized.

5. The High Court noted that the Trial Court and the First Appellate Court had considered this aspect at length and recorded concurrent findings of the fact that without knowledge of the owner of the truck, such a huge quantity of foreign liquor and that too going towards Gujarat, where liquor business is prohibited was not possible. Accordingly, the revision petition was dismissed.

6. In support of the appeal, learned counsel for the appellant submitted that the Courts below have not appreciated the factual position correctly. Alternatively it was submitted that under Section 47, as it stood before amendment, was applicable to the facts of the case and in lieu of confiscation fine can be imposed.

7. Learned counsel for the respondent, on the other hand, submitted that factual findings have been recorded to conclude that the plea taken by the owner-appellant about his lack of knowledge is clearly untenable. So far as the alternative submission is concerned, it is submitted that the provisions empower the Magistrate of two alternatives. One is to direct confiscation or in the alternative to give the owner of the thing liable to be confiscated option to pay such fine in lieu of confiscation as Magistrate thinks fit. This alternative was not suggested and also the appellant had taken the stand that the order of confiscation was improper.

8. Sections 46 and 47 (before amendment) read as follows:

"46. Liability of certain things to confiscation:

(1) Whenever an offence has been committed which is punishable under this Act, the intoxicant materials, still, utensil, implement or apparatus in respect of by means of which such offence has been committed shall be liable to confiscation.

(2) Any intoxicant lawfully imported, transported, manufactured, held in possession or sold along with or in addition to any intoxicant liable to confiscation under sub-section (1), and the receptacles, packages and coverings in which any such intoxicant materials, still, utensil, implements or apparatus as aforesaid is or are found, and the other contents if any, of the receptacles or packages in which the same is or are found, and the animals, carts, vessels, rafts or other conveyance used in carrying the same, shall likewise be liable to confiscation.

Provided that no animal, carts, vessels, rafts and other conveyance shall be liable to confiscation if it is proved that they are not the property of the offender and if the owner thereof establishes that he had no reason to believe that such offence was being or was likely to be committed."

47. Order of confiscation (1) Where in any case tried by him the Magistrate decides that anything is liable to confiscation under Section 46, he may either order confiscation or may give the owner of the thing liable to be confiscated, an option to pay, in lieu of confiscation, such fine as the Magistrate think fit."

9. According to the proviso to Section 46, the burden is on the owner of the property to establish that he had no reason to believe that such offence was being committed or was likely to be committed. It provides that no animals, carts, vessels, rafts and other conveyance shall be liable to confiscation, if it is proved that they are not the property of the offender and if the owner establishes that he has no reason to believe that such offence was being or was likely to be committed. As noted above, the owner has to establish the aforesaid facts.

10. The Trial Court, first Appellate Court and the High Court have concluded that the appellant has not established his lack of knowledge.

11. Coming to the alternative submission relating to payment of fine in lieu of confiscation we find that the Magistrate had not indicated the alternative to the appellant.

12. On the facts of the case, we direct that the vehicle shall be released to the appellant on payment of a sum of Rs.30,000/- as fine. The amount is to be deposited within a period of four months from today. If the deposit is not made within the aforesaid time, this order shall not operate and appeal shall be treated to have been dismissed.