

Kerala High Court

Vasanthakumari vs State Of Kerala on 1 December, 2006

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Crl MC No. 1202 of 2004(A)

1. VASANTHAKUMARI, D/O. KUNJU PILLA. K.,  
... Petitioner

Vs

1. STATE OF KERALA, REPRESENTED BY  
... Respondent

For Petitioner :SRI.V.N.ACHUTHA KURUP (SR.)

For Respondent :PUBLIC PROSECUTOR

The Hon'ble MR. Justice R.BASANT

Dated :01/12/2006

O R D E R

R.BASANT, J

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Crl.M.C.Nos.1202 of 2004 and 1203 of 2004

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Dated this the 1st day of December 2006

O R D E R

The petitioner is the second accused in two identical prosecutions initiated by the respondent through its excise officials under Section 57(a) of the Kerala Abkari Act. The petitioner is the licensee in respect of toddy shops No.14 and 15 of Pathanapuram Excise Range. On 03/01/2001, at different points of time, the excise officials went to shops 14 and 15 of which the petitioner is the licensee and drew samples of toddy, which was kept for sale. Samples of toddy collected were sent to

the chemical examiner and the chemical examiner submitted reports, which showed that the toddy samples contained 8.69% and 9.79% of ethyl alcohol.

2. Crime was registered and final report was filed on these precise allegations. The learned counsel for the petitioner submits that even if the entire allegations were accepted, no offence under Section 57(a) of the Kerala Abkari Act will be revealed in as much as presence of ethyl alcohol in toddy is perfectly justified and there is no upper limit of the ethyl alcohol prescribed under any of the relevant rules at the relevant point of time. Rule 9 of the Kerala Abkari Shops Disposal Rules 2002 was not in force at the relevant time and there was no specific embargo against the upper limit of ethyl alcohol which could be found to be present in the toddy offered for sale. In as much as ethyl alcohol cannot be said to be a foreign substance in toddy, Section 57(a) cannot have any application, it is contended. The learned counsel for the petitioner points out that paragraph 6(a) Chapter 5 volume 2 of the Kerala Excise Manual suggests that in fermented liquor like toddy, presence of ethyl alcohol upto 12% is perfectly legal. In these circumstances, the learned counsel for the petitioner submits that in any view of the matter, these prosecutions are liable to be quashed in as much as the allegations raised even if accepted in toto, do not reveal any culpable offence.

3. The learned counsel for the petitioner was requested to take instructions. The learned Public Prosecutor, after taking instructions, concedes that at the relevant point of time, there was no stipulation of law which prescribed that presence of ethyl alcohol in toddy to an extent of 8.69% and 9.79% is an offence. There is no allegation that the alcohol found present was not self generated or was added to toddy. The learned Public Prosecutor does not make any attempt to support the charge.

4. It follows from the above discussions that the petitioner does not deserve to stand in trauma of these prosecutions any further.

5. These Crl.M.Cs are in these circumstances allowed. All further proceedings in pursuance of crime Nos.43/01 and 44/01 of Pathanapuram excise range against the petitioner are hereby quashed.

(R.BASANT, JUDGE) jsr R.BASANT, J C.R.R.P.No.

ORDER 21ST DAY OF JULY 2006