2023 LiveLaw (SC) 627 : 2023 INSC 703

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
ABHAY S. OKA; J., SANJAY KAROL; J.
AUGUST 11, 2023
CRIMINAL APPEAL NO. 2363 OF 2023 arising out of SLP (Crl.) No. 9710/2023 [@Diary No. 16317/2022]
SATHYAN *versus* **STATE OF KERALA**

Abkari Act; Section 8 - The testimonies of official witnesses cannot be discarded simply because independent witnesses were not examined - the person receiving the information of the crime or detecting the occurrence thereof, can investigate the same. Questioning such investigation on the basis of bias or such like factor, would depend on the facts and circumstances of each case. It is not amenable to a general unqualified rule that lends itself to uniform application. *(Para 16-26)*

Criminal Trial - Mere urging that delay casts a suspicion on the investigation, without any evidence being led in furtherance thereof, cannot be sustained. Inordinate delay has been taken as presumptive proof of prejudice, but in particular cases where the accused is in custody. *(Para 30)*

Constitution of India, 1950; Article 21 - A "fair trial", is a right flowing from Article 21 of the Constitution of India and it encompasses all stages of trial including that of "investigation, inquiry, trial, appeal, revision and the trial. (Para 28)

For Appellant(s) Mr. James P. Thomas, AOR

For Respondent(s) Mr. Harshad V. Hameed, AOR Mr. Dileep Poolakkot, Adv. Mr. Subhash Chandran K.r., Adv. Mrs. Ashly Harshad, Adv.

J U D G M E N T

SANJAY KAROL J.,

1. This appeal is at the instance of the Accused-Appellant namely, Sathyan against the order and judgement dated 5th September, 2019 passed by the High Court of Kerala at Ernakulam in Criminal Appeal No. 2822 of 2008[1], wherein his prayer to set aside the conviction in S.C. No. 1140 of 2006 under Section 8 of the Abkari Act, was denied and the findings returned by Additional District & Sessions Judge, Fast Track (Ad Hoc-11), Kozhikode, in judgment dated 3rd November, 2008, were endorsed.

BRIEF FACTS

2. On 1stOctober 2003, the Appellant was arrested for carrying five litres of Arrack, in a jerry can, in his autorickshaw. The case was registered before the court of the Judicial Ist Class Magistrate, Kunnamangalam taking on the number C.P.36/06. Subsequently, the matter was committed, and eventually, made its way to the Court of Additional District & Sessions Judge, Fast Track (Ad Hoc11), Kozhikode[2].

3. Having framed 3 issues for consideration, the learned trial Court examined the testimonies of PW–1 who was the Excise Inspector Kunnamangalam range and the person who had detected the offence; PW–2, the Assistant Excise Inspector who was with PW-1 and that of PW–3, who was an independent witness but turned hostile.

[1] Hereinafter referred to as the "impugned judgement"
[2] Hereinafter "trial court"

4. On the first issue of the possession and recovery of arrack from the Appellant, and the second, concerning his guilt therefor, the court returned findings in the affirmative on the basis of the testimonies of PW-1 namely Raveendandrananthan and PW-2, namely, C.K Manoharan, while acknowledging that both of these witnesses were official witnesses, and looking into decisions rendered by this court on that aspect, stated that no reason could be found to disbelieve their evidence or to believe that the articles in question, referred to as "thondi articles" were tampered with.

5. On sentencing, which was issue No. 3, the Court stated that it was a case not fit to be accorded the benefit of the Probation of Offenders Act, 1958 and therefore the Appellant was sentenced to one year of imprisonment and a fine of one lakh rupees and, in default thereof, an additional period of 6 months rigorous imprisonment.

THE IMPUGNED JUDGEMENT

6. The High Court has observed that the ground of unexplained delay, on behalf of the Appellant, holds no merit as the Magistrate's endorsement indicates that the material was produced on the first day and it was directed to be produced on the next working day.

7. The ground of delay in submitting the final report that is, nearly 3 years from the date of detection, was negatived by the court on the ground that the judgement relied on by the counsel for the Appellant[3] has been declared *per incurium* by a subsequent judgement.[4] The effect thereof being that delay, *ipso facto*, is not fatal to the case of the prosecution.

8. On the interpolation in the Mahazar, i.e., ext. P1 it was observed that the same could not be given too much importance as the crime and occurrence report registered on the same day stated that the sample collected was indeed a sample of 180ml and not 375 ml as was initially written on such exhibit. The chemical examiners report also notes that the sample was received with its seal intact and therefore no doubt could be seen from the point that the sample drawn was from the contraband recovered from the Appellant.

9. In view of the above findings, vide the impugned judgement, the sentence handed down was confirmed.

10. Hence the present appeal.

ANALYSIS AND CONSIDERATION

11. Section 8 of the Abkari Act reads as follows-

"8. Prohibition of manufacture, import, export, transport, transit, possession, storage, sales, etc., of arrack. –

[(1) No person shall manufacture, import export [without permit transit] possess, store, distribute, bottle or sell arrack in any form.]

[(2) If any person contravenes any provisions of subsection (1), he shall be punishable with imprisonment for a term which may extend to ten years and with fine which shall not be less than one lakh."]

12. The grounds of challenge, as urged by the Appellant are that- in the absence of independent witnesses, the investigation cannot be sustained since the detecting officer and investigator were both official witnesses; there is interpolation in the Mahazar with respect to the quantity of the sample initially being written as 375 ML but then

[3] Krishnan H. v. State, [2015 (1) KHC 822]; 2014 SCC OnLine 28741
[4] Santosh T.A. & Anr. v. State of Kerala [2017(5)KHC 107]

subsequently been corrected to 180 ML; there is unexplained delay in production of the contraband before the trial court; the evidence of PW-2(C.K Manoharan) clearly shows that he was not aware of the seizure and also that he was not present at this spot; members of the patrol team were not made into witnesses; independent witnesses who signed the Mahazar were not examined, et cetera.

13. The question that we must consider is whether the conviction, solely on the basis of official witnesses is sustainable in the present facts? And, whether the delay of nearly 3 years in filing the challan can be said to be materially affecting the correctness of the judgement of the lower court as also the judgement impugned before us?

14. The trial court, when faced with this question of the conviction being based solely on the testimony of official witnesses, referred to two judgements of this court in **Tahir v. State (Delhi)[5] and Karamjiti Singh v. State (Delhi Administration)**[6] to observe that, there is no bar on convictions being based solely on the testimony of the police officials.

15. The act governing the instant dispute was brought into force to "consolidate and amend the law relating to the import, export, transport, manufacture, sale and possession of intoxicating liquor and of intoxicating drugs in the [state of Kerala]…" The Narcotic Drugs and Psychotropic Substances Act, 1985 has been brought on the statute books to "amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances…" Arguably, both these statutes seek the regulation of similar products, with the purpose of controlling the flow of identified substances. We find, in a case concerning the latter act, a Constitution bench of this Court in **Mukesh Singh v. State (NCT of Delhi)[7],** having noted as follows:-

"10.1. Under Section 173 CrPC, the officer in charge of a police station after completing the investigation is required to file the final report/charge-sheet before the Magistrate. Thus, under the scheme of CrPC, it cannot be said that there is a bar to a police officer receiving information for commission of a cognizable offence, recording the same and then investigating it. On the contrary, Sections 154, 156 and 157 permit the officer in charge of a police station to reduce the information of commission of a cognizable offence in writing and thereafter to investigate the same…

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12. Therefore, as such, there is no reason to doubt the credibility of the informant and doubt the entire case of the prosecution solely on the ground that the informant has investigated the case. Solely on the basis of some apprehension or the doubts, the entire prosecution version cannot be discarded and the accused is not to be straightaway acquitted unless and until the accused is able to establish and prove the bias and the prejudice. As held by this Court in *Ram Chandra* [*State of Rajasthan* v. *Ram Chandra*, (2005) 5 SCC 151 : 2005 SCC (Cri) 1010] the question of prejudice or bias has to be established and not inferred. The question of bias will have to be decided on the facts of each case [see *Vipin Kumar Jain* [*Union of India* v. *Vipan Kumar Jain*, (2005) 9 SCC 579]].

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12.2. Similarly, even with respect to offences under the IPC, as observed hereinabove, there is no specific bar against the informant/complainant investigating the case. Only in a case where the accused has been able to establish and prove the bias and/or unfair investigation by the informant-cum-investigator and the case of the prosecution is merely based upon the deposition

[5] (1996) 3 SCC 338
[6] (2003) 5 SCC 291
[7] (2020) 10 SCC 120

of the informant-cum-investigator, meaning thereby prosecution does not rely upon other witnesses, more particularly the independent witnesses, in that case, where the complainant himself had conducted the investigation, such aspect of the matter can certainly be given due weightage while assessing the evidence on record.

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13.2. (**II**) In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case-to-case basis. A contrary decision of this Court in *Mohan Lal* v. *State of Punjab* [*Mohan Lal* v. *State of Punjab*, (2018) 17 SCC 627 : (2019) 4 SCC (Cri) 215] and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled."

(emphasis supplied)

16. Therefore, it can no longer be said to be *res integra* that the person receiving the information of the crime or detecting the occurrence thereof, can investigate the same. Questioning such investigation on the basis of bias or such like factor, would depend on the facts and circumstances of each case. It is not amenable to a general unqualified rule that lends itself to uniform application.

17. The submission made by the learned counsel for the Appellant is that the fairness of the investigation was compromised since the person who detected the crime and the person who investigated, were one and the same. It was further submitted that the official witnesses being unreliable, independent witnesses are an indispensable requirement in the present case.

18. K.S Hegde J., writing for the court in the landmark **A.K. Kraipak v. Union of India**[8] observed as under:-

"It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. "

19. The concept of bias has been delved into by a two Judge Bench of this Court in ***N.K. Bajpai v. Union of India***[9] as follows:-

"48 Bias must be shown to be present. Probability of bias, possibility of bias and reasonable suspicion that bias might have affected the decision are terms of different connotations. They broadly fall under two categories i.e. suspicion of bias and likelihood of bias. Likelihood of bias would be the possibility of bias and bias which can be shown to be present, while suspicion of bias would be the probability or reasonable suspicion of bias. The former lead to vitiation of action, while the latter could hardly be the foundation for further examination of action with reference to the facts and circumstances of a given case. The correct test would be to examine whether there appears to be a real danger of bias or whether there is only a probability or even a preponderance of probability of such bias, in the circumstances of a given case. If it falls in the prior category, the

[8] (1969) 2 SCC 262
[9] (2012) 4 SCC 653

decision would attract judicial chastisement but if it falls in the latter, it would hardly affect the decision, much less adversely.

20. In the present instance, nothing has been put forward to show that there may be a reasonable ground for the presence of bias or that there may be "a real danger of bias" and therefore the bald plea of the investigation not been fair, judicious does not support the case of the Appellant.

21. From the above discussion, it is clear that simply because the person who detected the commission of the offence, is the one who filed the report or investigated, such an investigation cannot be said to be bad in law. That particular submission therefore must necessarily be negatived. We also notice that, the judgement of the trial court categorically records that the person conducting the investigation was PW-4 and neither PW-1 nor PW-2, on whose testimonies the court has relied to hand down a verdict of conviction. On that ground also, the submission of the Appellant, must be negatived.

22. Conviction being based solely on the evidence of police officials is no longer an issue on which the jury is out. In other words, the law is well settled that if the evidence of such a police officer is found to be reliable, trustworthy then basing the conviction thereupon, cannot be questioned, and the same shall stand on firm ground. This Court in **Pramod Kumar *v. State (Govt. of NCT of Delhi)*[10]**

13. This Court, after referring to *State of U.P.* v. *Anil Singh* [1988 Supp SCC 686 : 1989 SCC (Cri) 48] , *State (Govt. of NCT of Delhi)* v. *Sunil* [(2001) 1 SCC 652 : 2001 SCC (Cri) 248] and *Ramjee Rai* v. *State of Bihar* [(2006) 13 SCC 229 : (2007) 2 SCC (Cri) 626] has laid down recently in *Kashmiri Lal* v. *State of Haryana* [(2013) 6 SCC 595 : 2013 AIR SCW 3102] that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If, in the course of scrutinising the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the Department of Police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence.

23. Referring to **State (Govt. of NCT of Delhi) v. Sunil**[11], in **Kulwinder Singh v. State of Punjab**[12] this court held that: –

"23. … That apart, the case of the prosecution cannot be rejected solely on the ground that independent witnesses have not been examined when, on the perusal of the evidence on record the Court finds that the case put forth by the prosecution is trustworthy. When the evidence of the official witnesses is trustworthy and credible, there is no reason not to rest the conviction on the basis of their evidence."

24. We must note, that in the former it was observed: -

"21… At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature… If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action

[10] (2013) 6 SCC 588
[11] (2001) 1 SCC 652
[12] (2015) 6 SCC 674

merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions."

25. Recently, this Court in **Mohd. Naushad v. State (NCT of Delhi)**[13] had observed that the testimonies of police witnesses, as well as pointing out memos do not stand vitiated due to the absence of independent witnesses.

26. It is clear from the above propositions of law, as reproduced and referred to, that the testimonies of official witnesses can nay be discarded simply because independent witnesses were not examined. The correctness or authenticity is only to be doubted on "any good reason" which, quite apparently is missing from the present case. No reason is forthcoming on behalf of the Appellant to challenge the veracity of the testimonies of PW – 1 and PW – 2, which the courts below have found absolutely to be inspiring in confidence. Therefore, basing the conviction on the basis of testimony of the police witnesses as undertaken by the trial court and is confirmed by the High Court vide the impugned judgement, cannot be faulted with.

27. Further submission made on behalf of the Appellant was, "delay", in two aspects; one, the contraband being produced before the Magistrate and two, in the completion of investigation, i.e., from the arrest of the Appellant on 1st October, 2003, to the completion of the investigation on 17th April 2006. The first, is a superficial ground, plainly negated by record. The trial court has recorded in its order that the day after the arrest of the Appellant, 2nd October, 2003 was a holiday and therefore the contraband seized was, upon directions produced before the concerned Magistrate on the next working day, that being, 3 October 2003. This being the uncontroverted position, the production of the seized Arrack cannot be said to be delayed.

28. The second aspect of delay, however, assumes importance. It has been time and again observed that a "fair trial", is a right flowing from Article 21 of the Constitution of India and it encompasses all stages of trial including that of "investigation, inquiry, trial, appeal, revision and the trial"[14] In **Dilawar v. State of Haryana**[15] referring to various landmark judgements of this court, a bench of 2 learned Judges, observed: –

"7. It is not necessary to refer to all the decisions of this Court articulating the mandate of the Constitution that there is implicit right under Article 21 for speedy trial which in turn encompasses speedy investigation, inquiry, appeal, revision and retrial. To determine whether undue delay has occurred, one must have regard to nature of offence, number of accused and witnesses, workload of the court and the investigating agency, systemic delays. Inordinate delay may be taken as presumptive proof of prejudice particularly when accused is in custody so that prosecution does not become persecution. Court has to balance and weigh several relevant factors. Though it is neither advisable nor feasible to prescribe any mandatory outer time-limit and the court may only examine effect of delay in every individual case on the anvil of Article 21 of the Constitution,… This obligation flows from the law laid down by this Court inter alia in Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] , Hussainara Khatoon (I) v. State of Bihar [Hussainara Khatoon (I) v. State of Bihar, (1980) 1 SCC 81 : 1980 SCC (Cri) 23] , Abdul Rehman Antulay v. R.S. Nayak [Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225 : 1992 SCC (Cri) 93] and P. Ramachandra Rao v. State of Karnataka [P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578 : 2002 SCC (Cri) 830] ."

(Emphasis supplied)

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[13] 2023 SCC OnLine SC 784

[14] A.R Antulay v. R.S Nayak, (1992)1 SCC 225 (5-Judge bench) [15] (2018) 16 SCC 521

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29. A perusal of the record does not reflect any of the factors enumerated above, to come to the aid of justifying the delay in investigation of the instant offence, leading the final report to be submitted after nearly 3 years. the contraband substance was recovered immediately, only a few witnesses were examined, and even if systemic delays on account of transfer of personnel is considered, daytime elapsed between the date of the offence and the submission of the final report cannot be justified.

30. However, mere urging that delay casts a suspicion on the investigation, without any evidence being led in furtherance thereof, cannot be sustained. Inordinate delay has been taken as presumptive proof of prejudice, but in particular cases where the accused is in custody. Record reveals that the accused was released on bail on 21st October 2003. Hence, the presumption of prejudice will not apply in the instant facts.

31. Other grounds urged such as interpolation in the Mahazar, are in the attending facts, not of such significance so as to vitiate the entire case of the prosecution. Also, it has concurrently been found by both the learned courts below that such interpolation i.e., quantity of the sample being initially noted as 375ML and subsequently been corrected to 180 ML, with the latter indeed being the correct quantity stands corroborated by the unharmed sample, in sealed condition reaching the laboratory for chemical analysis as also the report generated therefrom which notes the sample to be corresponding to the latter, corrected quantity.

32. In view of the above discussion, we find that the Appellant's grounds to challenge the correctness of the judgement impugned, fail.

33. However, considering the facts at hand, that the offence in question is dated 1st October 2003; the final report after delayed investigation was submitted on 17th April 2006, he was convicted on 3rd November 2008, and that more than 20 years have passed since the commission of the offence, this court finds it fit to modify the sentence of the Appellant to serve a period of three months, simple imprisonment. The fine as awarded by the trial court and as upheld by the High Court, is confirmed.

34. Considering the economic status, the period of time to deposit the fine by the Appellant, as awarded, is extended by a period of one year. The judgment of the trial court shall stand modified, also to that extent.

35. The appeal is partly allowed in the terms indicated above.

36. The exemption from surrender as granted vide order dated 14th June 2022, stands vacated. The Appellant is directed to surrender before the court concerned, forthwith.

37. Interlocutory applications, if any, shall stand disposed of.

38. Costs easy.