

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID WEDNESDAY, THE 11TH

DAY OF JULY 2018 / 20TH ASHADHA, 1940

Cr1.MC.No. 6109 of 2017

CC 887/2017 of J.M.F.C.-I, VAIKOM
CRIME NO.1609/2017 OF VAIKOM POLICE STATION, KOTTAYAM

PETITIONER(S)/ACCUSED :-

MUKESH M.K., AGED 29, S/O.MURALEEDHARAN NAIR,
SIVARCHANA, ARATTUKULANGARA, VAIKOM P.O.

BY ADVS.SRI.K.R.VINOD
SMT.M.S.LETHA

RESPONDENT(S) :-

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, KOCHI - 31.

BY PUBLIC PROSECUTOR SRI.C.K.PRASAD

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11-07-2018,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
Cr1.MC.No. 6109 of 2017 ()

APPENDIX

PETITIONER(S)' ANNEXURES :-

ANNEXURE A1- THE CERTIFIED COPY OF THE FINAL REPORT IN
C.C.NO.887/2017 IN THE FILES OF JUDICIAL FIRST CLASS
MAGISTRATE COURT-I, VAIKOM.

RESPONDENT'S ANNEXURES :- NIL

//TRUE COPY//

P.A. TO JUDGE

P.UBAID, J.

CrI.M.C. No.6109 of 2017

Dated this the 11th day of July 2018

ORDER

The petitioner herein seeks orders quashing the prosecution against him under Section 294(b) IPC and under Section 15(c) of the Kerala Abkari Act (the Act) in C.C. No.887/2017 of the Judicial First Class Magistrate Court – I, Vaikom. The said case was suo moto registered by the Sub Inspector of Police, Vaikom.

2. The prosecution case is that the petitioner was found consuming liquor at the side of the public road in front of the Taluk Head Quarters Hospital, Vaikom at about 9.50 p.m. on 2.7.2017, and when the Sub Inspector approached him, the petitioner scolded the Sub Inspector in filthy language. The petitioner was arrested on the spot by the Sub Inspector, and he was subjected to Alco Meter Test. The petitioner was also taken to the Taluk Head Quarters Hospital, where, he was examined by a doctor.

3. The petitioner seeks orders on the ground that there is absolutely no material for a prosecution against him under Section 15(c) of the Kerala Abkari Act, or under Section 294(b) IPC, and that, if the prosecution proceeds on the available materials, it would be nothing, but an abuse of legal process. This is a case where, the prosecution relies mainly on the certificate of drunkenness issued from the Taluk Head Quarters Hospital, Vaikom. Though the petitioner was subjected to Alco Meter Test, the device gave a strange result of 12,777.3 mg per 100 ml. When the court required explanation regarding this strange result, the police submitted a statement of admission that it is a wrong result, and it happened probably due to the mechanical defect of the device.

4. The FIR, or the final report does not show what words, or what indecent, or obscene words were used by the petitioner against the Sub Inspector. No discussion is required to find that the charge under Section 294(b) IPC is quite baseless. For a prosecution under Section 15(c) of the Kerala Abkari Act, it must be proved that the accused was found consuming liquor at a public place. In this case, a very small quantity of 50 ml of liquor contained in a bottle of 1 litre capacity was seized, and the said quantity was not sent for chemical analysis.

5. In **State of Kerala v. Sreedharan** [1965 KHC 267 = 1965 KLT 1002], a Division Bench of this Court held that in the absence of a report from the

Public Analyst, it would not be safe to rely on the smell of alcohol alone to find that the liquid involved is liquor within the meaning of Section 8 of the Prohibition Act. Of course, this is a prosecution under Section 8(2) of the Kerala Abkari Act. In **Rajeev. P and others v. State of Kerala and another** [2009 KHC 979], a single Bench of this Court held that on the evidence of smell of alcohol alone, an accused cannot be found guilty under Section 15(c) of the Kerala Abkari Act, and that in a case where sufficient quantity of liquor was seized by the Police, a report of analysis must be obtained, identifying the liquid as liquor. In **Soman v. State of Kerala** [2011 (2) KLT 104], this Court held that for the mere reason that the liquid seized was not subjected to chemical analysis, it cannot be said that the prosecution under Section 15(c) of the Kerala Abkari Act is not maintainable. In **Rajeev's case**, it was held that the evidence of the Excise Officials that the liquid was identified as liquor by its taste and odour, is not sufficient for a conviction under Section 15(c) of the Act. **Soman's case** is a case where the accused was subjected to Alco Meter Test, and a positive result was obtained. Added to that, there was the evidence of the Excise Officials also that the liquid was identified as liquor by its 'taste and odour'. But in this case, the position is different. The Alco Meter Test gave a strange

result of exorbitant reading, which is now admittedly a wrong reading. No value can be attached to the Alco Meter reading.

6. In the Motor Vehicles Act, there are some provisions dealing with drunken driving, and the procedure for detection of the presence of alcohol in the blood of the drunken driver. The scheme of the provisions in Sections 203 and 204 of the Motor Vehicles Act will show that in a case where, breath test is not possible, or where the accused refused to give breath sample for analysis, the concerned person will have to be taken to a hospital, where a medical practitioner will have to collect his blood sample, subject it to laboratory test, and find out the alcohol content in the blood. Such provisions are not there in the Kerala Abkari Act. Though such provisions are not there in 'the Act', the procedure contained in the Motor Vehicles Act to meet such identical situations can be applied in the case of prosecution and proceedings under Section 15(c) of the Act. In a prosecution under Section 15(c) of the Act, where the prosecution relies on the oral evidence of the Officials regarding taste and odour, and where there is no Alco Meter test result, the proper procedure must be to collect the blood sample of the accused at a hospital, and get the percentage of alcohol in the blood detected by laboratory test. Such a test was not conducted in this case. The Doctor's Certificate produced in this case is only that the person had consumed alcohol, but that

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finding is based on the smell of alcohol detected by the Doctor. There is no scientific material to show that alcohol was detected in the blood of the accused. Practically, the only material is that there was smell of alcohol when he was brought at the hospital. Such smell need not always be due to the consumption of liquor. In a case like this, the prosecution will have to prove that the accused was found consuming liquor at a public place, and that the liquid he consumed was identified as liquor. So it is very important that there must be evidence to prove that the liquid seized by the Police or consumed by the accused was identified as liquor. When there is no material to prove that aspect, the prosecution will definitely be an abuse of legal process. I find that if the present prosecution proceeds on the basis of the available materials it will not reach anywhere, and it will definitely be a sheer waste of time and an abuse of legal process. The prosecution is liable to be quashed.

In the result, this Crl.M.C is allowed. The prosecution against the petitioner in C.C. No.887/2017 of the Judicial First Class Magistrate Court - I, Vaikom will stand quashed under Section 482 of the Code of Criminal Procedure.

Sd/-

Crl.M.C. No.6109 of 2017

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P.UBAID

JUDGE

//True copy// P.A.

To Judge

ma/jvt/12.7.2018