

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

CRL.A.No. 58 of 2006 (C)

AGAINST THE JUDGMENT IN SC 666/2001 of ADDITIONAL SESSIONS COURT FOR
ABKARI ACT CASES, KOTTARAKKARA DATED 21.12.2005

APPELLANT/ACCUSED:

REGHUNATHAN S/o.MADHAVAN KUNNUVILA
VEEDU, NELLIKUNNAM, UMMANNOOR VILLAGE.

BY ADV. SRI.SAJU.S.A

RESPONDENT/COMPLAINANT:

STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. PUBLIC PROSECUTOR: SMT BINDU GOPINATH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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CrlAppeal.No.58 of 2006

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Dated this the 31st day of August, 2015

JUDGMENT

This appeal arises from the judgment, conviction and sentence in S.C.No.666 of 2001 of the Additional Sessions Court, Kottarakkara.

2. The case of the prosecution is that on 20.12.1999 at about 11.30a.m., the accused was found in possession of 4 liters of arrack contained in a jar, having a capacity of 5 litres. He was intercepted by CW1, Excise Inspector of the Excise Circle Office, Kottarakkara and CW2, Preventive Officer attached to the same office. After tasting, it was confirmed that the content was arrack. After the initial formalities, he was arrested and produced before the magistrate. On completion of the investigation, a final report was laid and accused faced trial before the court of Sessions.

3. Before the court below, prosecution examined PWs.1 to 5 and Exts.P1 to P6 were marked. MOs.1 and 2 were identified. There was no defence evidence. The court below on an evaluation of the available materials found the accused guilty, convicted and

sentenced him to undergo rigorous imprisonment for two years, to pay a fine of Rs.1,00,000/- and in default, to undergo rigorous imprisonment for three more months for the offences punishable under Sections 8(1) and 8(2) of the Abkari Act.

4. Aggrieved by the above conviction and sentence, accused has preferred this appeal.

5. Heard learned counsel for the appellant and the learned Public Prosecutor.

6. Learned counsel for the accused contended that the evidence tendered by the prosecution is shaky, not reliable and that the independent witnesses did not support the prosecution. It was contended that on material points, the version of PW1 and PW2 differed and inconsistent versions were given by both the witnesses.

7. The prosecution is mainly relying on the oral testimony of PWs.1 and 2 coupled with Exts.P1 and P2 namely, mahazar and arrest memo which are the contemporaneous documents. Ex.P3 is the notice regarding his arrest alleged to have been served on the close relative of the accused. MO1 is the can which was recovered from him and MO2, the sample bottle.

8. It is true that PWs.3 and 4, who were claimed to be the independent witnesses, did not support the prosecution case. One of the contention of the learned counsel was that even Ext.P1 shows that interception and detention were done in front of a shop, but the shop owner was not made a witness. I do not find anything wrong in that, since, it is up to the investigating agency to take the assistance of any of the independent witness who is available at the spot. It is also true that PWs.3 and 4 did not support the prosecution case. That by itself is not likely to render the prosecution evidence shaky, if sufficient reliance can be placed on the official witnesses.

9. PWs.1 and 2 have consistently given evidence regarding the interception, tasting of the contraband, sampling, labelling and preparation of the contemporaneous documents. The version mentioned in Exts.P1 and P2 sufficiently corroborate the version of PWs.1 and 2. Evidently, on material points, both the witnesses have given consistent evidence which is duly and sufficiently corroborated by the contents of the contemporaneous documents.

10. Ext.P3 is the notice served on the close relative of the accused. Learned counsel for the accused vehemently contended

that the accused had a case that he is a bachelor. However, PW1 in his version had stated that the notice was served on the wife of the accused. However, there is no evidence to show that the accused was a bachelor. It appears that PW1 has made a mistake in mentioning that the notice was served on the wife of the accused. A reference to Ext.P3 shows that it was in fact served on the mother of the accused. This appears to be a factual error in the oral testimony of PW1. However, on this aspect of service of notice on the person mentioned in Ext.P3, there seems to be no material contradiction brought out in cross examination.

11. Yet another contention of the learned counsel for the accused was that, the accused had a case that he was employed in a nearby toddy shop and was falsely implicated at the instance of the owner of the toddy shop. There is absolutely no material to prove that.

12. On a due appreciation of the available evidence, it seems that the substratum of the prosecution case is proved through PWs.1 and 2, which get its sufficient corroboration from the documents. It is also to be noted that on the same day, the accused was taken to the excise office, Ext.P5 occurrence report prepared and the samples which were properly sealed were sent to

the chemical analysis lab on the same day itself. Ext.P6 is the chemical analysis report which shows that the sample contained Ethyl Alcohol. It is also borne on record that the seal on the sample remained in tact and tallied with the sample seal. Evidently, the samples which were taken at the spot, sealed and labelled, reached the excise office on the same day and thereafter, forwarded to the Court for forwarding to chemical analysis lab, on that day itself. There is nothing to show that there was any tampering with the seal. Hence, I find no reason to doubt the finding of the chemical analysis lab as well as the prosecution case that the sample which was seized at the spot was arrack. Even though a vague contention was set up by the learned counsel for the accused that there was difference in the colour of the sample from that of the contents in the main can, there is no material to accept the argument.

13. An evaluation of the available materials lead to the definite conclusion that the prosecution has succeeded in proving its case and the trial court has correctly appreciated the case and applied the law. I find no reason to arrive at a different conclusion and to interfere with the conviction imposed by the court below.

14. Learned counsel for the accused contended that the accused is a person aged about 24 years and that he is not involved in any other case. The incident happened in the year 1999. Accused has been facing the trauma till now. There is nothing on record to show that he is involved in any other case. The learned counsel for the accused relying on the decision of the Supreme Court in **Sasikumar and Anr. Vs. State of Kerala (2013 KHC 4008)** contended that in appropriate cases the accused is entitled for a lenient view. In the above case, the Honourable Supreme Court stated that even though a minimum penalty of Rs.1,00,000/- is provided under the Kerala Abkari Act, that does not indicate that in appropriate case, especially in the case of small type operators in the illicit trade, the default sentence imposed should also be correspondingly on the higher side. Evidently, the Supreme Court has held that a lenient view can be taken in appropriate cases.

15. Having considered the entire facts, I feel that considering the gravity of the offence, at the same time the mitigating circumstances, accused is entitled for a lenient sentence. Rigorous imprisonment for six months coupled with a fine of Rs.1,00,000/- and in default to undergo sentence of one

month will serve the interest of justice.

In the result, the criminal appeal is allowed in part. While maintaining the conviction, sentence imposed by the court below is modified to that of rigorous imprisonment for six months and a fine of Rs.1,00,000/-, in default, the accused shall undergo simple imprisonment for one month. The period of detention already undergone shall be set off against the substantial part of the sentence. Bail bond executed by him shall stand cancelled. The accused shall present before the court below to undergo remaining part of the sentence.

Sd/-

SUNIL THOMAS
Judge

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