

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

CRL.A.No. 163 of 2011 ()

AGAINST THE JUDGMENT IN SC 286/2006 of ADDITIONAL DISTRICT COURT
(ADHOC), FAST TRACK NO.1, PATHANAMTHITTA DATED 22-06-2006

APPELLANT(S) /APPELLANT/ACCUSED:

EAPEN KOSHY, AGED 38 YEARS,
S/O.KOSHY, RESIDING AT INCHAKKALOTHU VEEDU
VADAKKOTHUKARA, PURAMATTOM, VENNIKULAM
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.V.SETHUNATH

RESPONDENT(S) /COMPLAINANT/STATE:

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

BY PUBLIC PROSECUTOR SMT.ANITHA RAVINDRAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MARY JOSEPH, J.

=====
Criminal Appeal No.163 of 2011

=====
Dated this the 17th day of June, 2015

JUDGMENT

Appellant is the accused in S.C No.286 of 2006 on the file of the Additional District & Sessions (Ad-hoc) Fast Track-I, Pathanamthitta. The accused stands charge sheeted by the Excise Inspector, Mallappally Excise Range in O.R No.286 of 2006 of Mallappally Excise Range alleging commission of the offences punishable under Sections 8(1) & (2) of the Kerala Abkari Act, .

2. The case of the prosecution was that the accused was found in possession of one litre of arrack. After investigation, finding substance in the allegations, the Excise Inspector, Mallappally Excise Range laid charge against the accused after duly concluding the investigation formalities. The case was committed to the Court of Sessions by the learned Magistrate. On appearance of the accused, charge was read over. On his plea of not guilty to the charge read over to him, the trial was proceeded with. Prosecution has examined P.Ws. 1 to 5 and marked Exts.P1 to P8 and MO1. Exts.C1 and C2 were also marked as court

exhibits. Accused was examined under Section 313 of the Code of Criminal Procedure. No evidence was adduced from the side of the accused. The Additional District and Sessions(Ad-hoc) Fast Track-I, Pathanamthitta appreciated the evidence cited supra and came to the conclusion that the accused is guilty of the offence charged against him i.e. under Sections 8(1) & (2) of the Kerala Abkari Act and thereby convicted and sentenced him to undergo Rigorous Imprisonment for one year and also directed him to pay a fine of Rs.1 lakh. Rigorous Imprisonment for six months was also imposed upon him as default sentence. The said judgment of the learned Additional District and Sessions Judge (Ad-hoc) Fast Track-I, Pathanamthitta is assailed by the accused through this appeal memorandum on the ground that the learned trial judge has not appreciated the evidence in its proper perspective. It is also alleged in the appeal memorandum that the formalities required to be complied with by the detecting officer as well as the investigating officer as per the provisions of the Kerala Abkari Act have not been complied with. Accordingly, it is urged by Sri. V.Sethunath, the learned counsel representing the appellant/accused, that the impugned

judgment of the learned trial judge is only liable to be set aside and the appellant/accused be set at liberty.

3. I have gone through the impugned judgment and perused the evidence available on record. I could not find fault with the trial judge as the detection of one litre of arrack from the possession of the accused was proved by the oral evidence of P.W.1 and it was corroborated by the deposition of P.W.4, who was a companion officer with P.W.1. P.Ws.2 and 3 are the witnesses cited by the prosecution as attestors to Ext.P3 seizure mahazar. Though turned hostile to the prosecution, the aforesaid two witnesses have categorically admitted their respective signatures in Ext.P3 seizure mahazar. P.Ws.1 and 4 have also categorically deposed about the sampling of the contraband liquor, the sealing and affixure of signature in both the sample as well as the remaining contraband. The witnesses who have attested Ext.P3 seizure mahazar have also deposed in corroborative terms regarding the seizure, sampling and packing of the contraband. The aspects regarding investigation have been deposed by P.W.5, the investigating officer. C.W.1, the thondy section clerk attached to the Judicial First Class

Magistrate Court, Thiruvalla has also deposed in categorical terms on the basis of Exts.C1 and C2 that the samples taken from the place of seizure have been received by them without the seals on it being tampered and those have been forwarded to the Chemical Examiner's Laboratory in time. The fact that the accused had been arrested from the spot of detection has been proved by P.W.3 by admitting his signature in Ext.P2, Arrest Notice. Both P.W.1 and P.W.4 have identified the contraband liquor as arrack by the process of smelling and tasting and they have divulged that fact in the witness box in clear terms. It is further strengthened from Ext.P8 report obtained from the Chemical Examiner's Laboratory wherein the Assistant Chemical Examiner has certified after analysis of the sample send for chemical examination to them that it contained 34.38 % by volume of Ethyl Alcohol. The accused was also identified by appropriate witnesses. Therefore, there is absolutely no merit in challenging the judgment of the trial court which is appealed against.

4. Even though judgment of the trial court was vehemently challenged by Sri.Sethunath, learned counsel for the appellant,

by raising several grounds in the appeal memorandum, when the matter was taken up for hearing, has conceded with the finding of the trial judge and expressed his declination to argue the case on merits. It is submitted by him that the appellant/accused has already undergone ten months imprisonment against the imposed sentence of rigorous imprisonment for one year. Since the appellant/accused has already undergone ten months imprisonment against the imposed sentence of one year Rigorous Imprisonment, for having found fault with possession of one litre of arrack, what is required is only to take a liberal approach in the matter by modifying the sentence by reducing it to that already undergone by him.

5. I have gone through the records of the case and the impugned judgment and found therefrom that the sentence against the accused was not suspended and he was not enlarged on bail at the time when the appeal was admitted. The accused also does not have the history of previous conviction in similar matters. The accused was in custody ever since the passing of the impugned order of sentence and was also allowed set off for the period of pre-trial custody from 26.09.2004 till 17.10.2004.

Smt. Laliza.T.Y, the learned Public Prosecutor, also has not submitted anything to the contrary. Therefore, the offence involved being the first offence of the nature, I am of the view that there is nothing wrong in granting the relief sought.

In the result, the Criminal Appeal is allowed in part. The sentence of Rigorous Imprisonment for one year imposed by the trial judge is modified by reducing it to the term of rigorous imprisonment already undergone by the accused. Six months rigorous imprisonment is also ordered to be undergone in case of default in payment of the fine amount. The period of default sentence is maintained with a modification by changing its nature from 'rigorous' to 'simple'. The records of the case reveal that Rs.10,000/- was deposited towards the imposed fine amount of Rs.1,00,000/- and Rs.90,000/- is left unpaid. Therefore, the accused shall be set at liberty only on depositing the balance amount of Rs.90,000/- or on undergoing the default sentence as aforesaid.

Sd/-
MARY JOSEPH, JUDGE