

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

Cr1.MC.No. 924 of 2015

AGAINST S.C NO. 2174/2008 AND S.C NO.993/2010 OF THE ASST.
SESSIONS COURT, NEDUMANGAD

CRIME NO.18/2007 OF ARYANAD EXCISE RANGE OFFICE,
THIRUVANANDAPURAM

PETITIONER:

RAJAN, AGED 51 YEARS,
S/O.DEVADASAN, RAJAGIRI HOUSE, SANTHI NAGAR,
VEMBANOOR, KADAMPANADU MURI,
ARUVIKKARA VILLAGE AND P.O, NEDUMANGAD TALUK,
THIRUVANANTHAPURAM DISTRICT- 695 564.

BY ADV. SRI.MANJU ANTONEY

RESPONDENT:

STATE OF KERALA
CHARGE REPRESENTED AND SHEETED BY THE EXCISE INSPECTOR,
ARYANAD EXCISE RANGE,
THIRUVANANTHAPURAM DISTRICT THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM 682 031.

BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 25-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 924 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A1. COPY OF JUDGMENT DATED 13.06.14 PASSED BY THE
HONOURABLE ASSISTANT SESSIONS COURT, NEDUMANGAD IN SC 2174/08.

ANNEXURE A2. COPY OF JUDGMENT DATED 10.06.14 PASSED BY THE
HONOURABLE ASSISTANT SESSIONS COURT, NEDUMANGAD IN SC 993/10.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.924 of 2015

Dated this the 25th day of February, 2015

O R D E R

The petitioner herein is a convict in two cases brought under Sections 8 (1) and (2) of the Kerala Abkari Act. In S.C No.2174/2008 the learned Assistant Sessions Judge, Nedumangad convicted the petitioner under Section 8(2) of the Kerala Abkari Act. He was accordingly sentenced to undergo rigorous imprisonment for one year, and also to pay a fine of ₹1,00,000/-. In S.C No.993/2010 also the very same court convicted the petitioner under Sections 8(2) of the Kerala Abkari Act, and accordingly sentenced to undergo rigorous imprisonment for one year, and also to pay a fine of ₹1,00,000/-. It is submitted that he has been undergoing sentence in the two cases. The petitioner has now come before this Court under Section 482 of the Code of Criminal Procedure for a direction that the sentences in the two cases shall run concurrently.

2. Section 31 of the Code of Criminal Procedure provides that:

“When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of Section 71 of the Indian Penal Code (45 of

1860), sentence him for such offences, to the several punishments prescribed therefore which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.”

3. Thus it is the general rule under Section 31 of Cr.P.C that different sentences imposed by the court for different offences in a trial will have to run consecutively, unless the court directs otherwise that the sentences shall run concurrently. Here Section 31 of the Code of Criminal Procedure has no application because the two sentences were imposed in two different cases. The Code of Criminal Procedure does not contain any specific provision to deal with such a situation, and to order the different sentences in two or more different cases to run concurrently.

4. In one case where the petitioner herein was convicted under Section 8(1) of the Kerala Abkari Act he was found possessing 2.5 liters of arrack, and in the other case he was found possessing 5 liters of arrack. **In Bhaskaran v. State (1978 KLT 6)** a Single Bench of this Court held that orders directing that different sentences in different cases shall run concurrently is not possible under the Code of Criminal Procedure. But in **Subramonian v. State of Kerala (1983 KLT 452)** a Division Bench of this Court held

otherwise, that under Section 482 of the Code of Criminal Procedure, the High Court can exercise the discretionary powers in the interest of justice, if such a direction to run two different sentences in two different cases concurrently is absolutely necessary. The Division Bench has clearly held that this cannot be a precedent, and that any positive direction for such a course cannot in fact be made. In paragraph 10 of the judgment the Division Bench held thus:

“10. The real question that arises in the case is when can the court give a direction in its discretion that the subsequent sentence should run concurrently with the former sentence. It will not be possible to give very positive directions with regard to that. It should depend on the facts of each case, the nature or character of the offences committed, the prior criminal record of the offender, his age and sex etc.

5. Thus the Division Bench has made it clear that only in appropriate cases where such a course is felt absolutely necessary by the Court, discretionary powers under Section 482 Code of Criminal Procedure can be exercised to direct different sentences in two or more different cases to run concurrently. Exercise of such direction will depend upon the facts of the case, the nature and character of the offence committed, the prior convictions and antecedents of the offender, his age, sex etc. The reported case was a case of theft.

6. Now the question is whether discretionary powers under Section 482 of the Code of Criminal Procedure can be invoked in this case. Though every offence is an offence against the society, the offence of theft will practically affect an individual. But an offence made punishable under Section 8(2) of the Kerala Abkari Act will affect the Society as such. The total quantity of arrack seized from the possession of the accused can spoil many youngsters. This social consequence will have to be considered by the court in deciding the request to exercise the the discretion under Section 482 of the Code of Criminal Procedure. Much is argued about the sentencing policy in India, and the draw back of our criminal justice system in relation to the different provisions in the Indian Penal Code and the Code of Criminal Procedure. Here, I find nothing wrong in the discretion exercised by the trial court in the matter of sentence. When the maximum sentence prescribed under the law is imprisonment for ten years, what is imposed by the trial court is only one year sentence. The draw back of sentencing policy need not be discussed in such a circumstance.

7. On a consideration of the circumstances of this case, the nature of the offence committed by the

petitioner, the social consequences of the offence committed by him, and also the social circumstances in Kerala where there is total prohibition of manufacture, possession and use of arrack, I find that this is not at all a fit case to apply the decision of the Division Bench in **Subramonian v. State of Kerala.** Of course there is no specific provision to grant the relief as prayed for. What is possible is only exercise of discretion in view of the Division Bench decision. But such discretion cannot be exercised indiscreetly by this Court, because if such discretion is indiscreetly exercised in all cases, it will have unpleasant and unhealthy consequences in the society, conveying a wrong and negative message regarding the criminal justice system.

In the result, this Criminal Miscellaneous Case is dismissed in limine without being admitted to files.

The learned counsel for the petitioner seeks permission to return the impugned judgments for filing appeal against the conviction. The request is allowed.

**P.UBAID
JUDGE**

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