

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

Crl.Rev.Pet.No. 1564 of 2003 (V)

CRA 30/2000 of THE SESSIONS COURT,MANJERI
CC 419/1997 of JUDL.MAG.OF FIRST CLASS-I,MANJERI

REVISION PETITIONER(S):

VILAYATH KUNHIKUTTAN, S/O DASAN,
ALUNGAL VEEDU, MELE CHALIPADAM,
EDAVANNA, MALAPPURAM DISTRICT

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S):

THE STATE OF KERALA REP. BY THE
SUB-INSPECTOR OF POLICE, EDAVANNA POLICE STATION,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31

PUBLIC PROSECUTOR SMT. BINDU GOPINATH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 11-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

RAJA VIJAYARAGHAVAN.V. J

Crl.R.P.1564 of 2003

Dated 11th August, 2015

ORDER

1. In this Revision, the petitioner assails the concurrent findings of guilt arrived at against him by the Courts below. The petitioner was charge sheeted by the Sub Inspector of police, Edavanna alleging commission of offence punishable u/s 55(a) and 55(g) of the Abkari Act.

2. The gist of the prosecution case is that on 15.8.1996 at about 12.30 pm, the accused was seen in possession of illicit arrack and also the materials and implements used for the manufacture of illicit arrack. He was arrested from near his un-numbered house which is adjacent to another house bearing No.III/605 situated within the limits of Edavanna Panchayat.

3. In order to prove the case of the prosecution, PW1 to PW6 were examined and Exts.P1 to P4 were marked. MO1 to 6 series were produced and identified. After the close of the prosecution evidence, the incriminating materials were put to the accused u/s 313 of the Cr.P.C. The petitioner denied the materials against him and maintained his innocence. On the side of the defence, DW1 and DW2 were examined.

4. The learned Magistrate on an appraisal of the oral and documentary evidence, came to the conclusion that prosecution had succeeded in proving the guilt of the accused u/s 55(a) of the Act and he was sentenced to undergo rigorous imprisonment for a period of six months and also to pay a fine of Rs.25,000/- and in default to undergo simple imprisonment for three months and to undergo rigorous imprisonment for a period of six months and to pay fine of Rs.25,000/- and in default, to undergo

imprisonment for three months u/s 55(g) of the Act. It was ordered that the period of substantive sentence shall run concurrently. Against the above finding, the petitioner preferred appeal before the Court of Sessions Judge, Manjeri, as Crl.A.30 of 2000. The learned Sessions Judge, on a re-appraisal of evidence, allowed the appeal in part and conviction and sentence imposed on the appellant for the offence u/s 55(g) of the Act, was set aside and acquitted the appellant. As far as the conviction u/s 55(a) is concerned, it was altered to one u/s 58 of the Act and the sentence of imprisonment for six months was confirmed. The sentence of fine was modified as Rs.5000/- and in default of payment of fine, the petitioner was directed to undergo rigorous imprisonment for one month. It is against the above finding that this revision petition is preferred.

5. I have heard Smt.Smitha Babu, the learned counsel appearing for the petitioner and Smt.Bindu Gopinath, the

learned Public Prosecutor.

6. The only question that arises is whether the conviction and sentence passed against the petitioner u/s 58 of the Abkari Act is sustainable against the petitioner.

7. Admittedly, seizure was effected in this case on 15.8.1996. The evidence also establishes that the petitioner was found in possession of 5 litres of illicit arrack. S. 58 of the Abkari Act provides punishment for possession of illicit liquor. U/s 58, whoever without lawful authority has in his possession any quantity of liquor or any intoxicating drug knowing the same to have been unlawfully imported, transported or manufactured or knowing the duty tax or rental payable under the Act not have been paid shall be punishable as provided therein. As is clear from the section, mere possession of any quantity of liquor or intoxicating drug by itself is not sufficient to convict a person u/s 58. The

possession must be first without lawful authority and secondly with the knowledge that it has been either unlawfully imported or unlawfully transported or unlawfully manufactured. (see Josekutty v. State of Kerala (2013 (1) KHC 241 [DB])).

8. In the case on hand, except stating that in contravention of the Act, the petitioner was found in possession of illicit arrack, there is no allegation in the charge that the petitioner has been in possession of liquor, with the knowledge that it was unlawfully manufactured. Allegation that it is illicit liquor by itself will not attract an offence u/s 58 in the absence of a case that the petitioner was awarded that it is unlawfully manufactured. Though s.64 of the Act provides for presumption to be drawn, the said provision was inserted only by Act 16 of 1997 w.e.f 3.6.1997. Hence, presumption also cannot be drawn in respect of the offence u/s 58 by recourse to s.64 of the Act.

It was for the prosecution to allege and prove that the petitioner was in possession of five litres of arrack with the knowledge that it was unlawfully manufactured. In view of the above, I hold that the petitioner cannot be convicted u/s 58 of the Abkari Act.

9. The next question is whether the petitioner is liable to be convicted as provided u/s 63 of the Act. S.63 provides that whoever is guilty of any act or intentional omission in contravention of any of the provisions of the Act or of any rule or order made under the Act and not otherwise provided for in the Act shall, on conviction, be punished for each such wilful act or omission with fine which at the time of commission of the offence may extend to Rs.2000/-. It was by Act 4 of 1996, which came into force on 27.3.1996 that after clause 6 of S.3, clause 6A was inserted defining arrack. S.8 was also inserted providing prohibition of manufacture, import, export, transport, transit, possession, storage and

sale of arrack. U/s 8 no person shall manufacture import, export, transport, transit, possess, storage, distribute bottle or sell arrack in any form. therefore, by virtue of s.8 there is a prohibition for possessing arrack in any form which came into force w.e.f 27.3.1996. It was only by amendment Act 16 of 1997 which came into effect on 3.6.1997 that sub-section (2) of S.8 was inserted after re-numbering original s.8 as sub-section (1) of s.8 providing punishment for contravention of sub-section (1) of s.8. Therefore, before 3.6.1997, no specific punishment was provided for contravention of the provisions of s.8 as it then stood. In this case, the petitioner was found in possession of illicit arrack on 15.6.1996 and therefore, the petitioner could be convicted and sentenced as provided u/s 63 of the Abkari Act.

10. The Revision Petition is therefore, allowed in part. The conviction of the petitioner for the offence u/s 58 of the

Kerala Abkari Act by the Judicial Magistrate of First Class-I, Manjeri, in C.C.419 of 1997 is modified u/s 63 of the Kerala Abkari Act. The sentence is modified to a fine of Rs.2000/- only. The Judicial Magistrate of First Class-I Manjeri, is directed to realise the fine in accordance with law.

Sd/-

RAJA VIJAYARAGHAVAN.V.
Judge

MrCs

//True Copy//

P.S.ToJudge