

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

Crl.Rev.Pet.No. 1778 of 2003 ()

AGAINST THE JUDGMENT IN CRL.A 217/2001 of D.C.& SESSIONS COURT,MANJERI
DATED 29-05-2003

AGAINST THE JUDGMENT IN CC 328/1997 OF JUDICIAL FIRST CLASS MAGSITRATE
COURT-II, PERINTHALMANNA DATED 20-09-2001

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

MUTHU @ PANIKKAN, S/O.PANIKKAN,
OORAKAPARAMBIL HOUSE, MELATOOR,
CHEMMANIYODE, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S)/RESPONDENT/STATE/COMPLAINANT:

THE STATE OF KERALA, REPRESENTED BY
THE EXCISE INSPECTOR, PERINTHALMANNA EXCISE RANGE,
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM, KOCHI-31.

BY ADV.SMT.V.H.JASMINE, PUBLIC PROSECUTOR.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
10-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.AV

K.RAMAKRISHNAN, J

CRL.R.P.NO.1778 OF 2003

Dated this the 10th day of April, 2015

O R D E R

Accused in CC.No.328/1997 on the file of the Judicial First Class Magistrate Court-II, Perinthalmanna, is the revision petitioner herein.

2. The revision petitioner was charge sheeted by the Excise Inspector, Perinthalmanna, in CR.No.7/1997 of that excise range alleging offence under section 55(a) of the Abkari Act.

3. The case of the prosecution in nutshell was that on 17.02.1997, the revision petitioner was found to be in possession of 5 litres of arrack in violation of provisions of Abkari Act and thereby he had committed the offence punishable under section 55(a) of Abkari Act. After investigation, final report was filed and it was taken on file as CC.No.328/1997 on the file of the Judicial First Class Magistrate Court-II, Perinthalmanna.

4. When the revision petitioner appeared before the court below, the particulars of offences were read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 4 were examined and

Exts.P1 to P4 and MO1 were marked on their side. After closure of the prosecution's evidence, the revision petitioner was questioned under section 313 of the Code of Criminal Procedure (herein after called the Code) and he denied all the incriminating circumstances brought against him in the prosecution's evidence. He had further stated that he had not committed any offence and he is innocent of the same. But no defence evidence was adduced on his side. After considering the evidence on record, the trial court found the revision petitioner guilty under section 55(a) of the Abkari Act and convicted him thereunder and sentenced him to undergo simple imprisonment for one year and also to pay a fine of Rs.25,000/- in default to undergo simple imprisonment for six months. Aggrieved by the same, the revision petitioner filed Crl.Appeal No.217/2004 before the Sessions Court, Manjeri, and the learned Sessions Judge by the impugned judgment dismissed the appeal confirming the order of conviction and sentence passed by the court below. Aggrieved by the same, the present revision has been filed by the revision petitioner- accused before the court below.

5. Heard Adv.Smt.Nisha, representing Sri.Babu S.Nair, the counsel appearing for the revision petitioner and Smt.Jasmine, the public prosecutor appearing for the State.

6. The counsel for the revision petitioner submitted that the independent witness to the seizure has turned hostile and except the interested testimony of official witnesses, there is no other evidence to prove the seizure and the articles were produced only on the next day and the delay has not been explained. According to the learned counsel, the conviction entered is unsustainable and sentence imposed is harsh.

7. The learned public prosecutor supported the concurrent findings of the court below on this aspect.

8. The case of the prosecution as emerged from the prosecution witnesses was that on 17.02.1997, at about 4.p.m, while PW1 the Preventive Officer along with PW2 guard were doing petrol duty, and when they reached near the railway track in front of the house of Palliparambil Kamakshi at Chemmaniyode, they saw the revision petitioner coming with MO1 cannas in his hand and on seeing the excise parties, he tried to go away from the place. So, they stopped him and examined the contents of the cannas in the presence of PW3 and another independent witnesses and found that it contained 5 litres of some liquor and on examination, it was revealed that it was arrack. Thereafter, he had taken sample of 180 ml from the same, and sealed the sample bottle and affixed label containing the signatures of himself and witnesses and the

revision petitioner and sealed the same and he had sealed the MO1 cannas also in the same manner and seized the same as per Ext.P1 mahazar. He arrested the revision petitioner and came to the excise office and entrusted him along with the documents prepared and the contraband articles to PW4 the excise inspector, who registered Ext.P2 crime and occurrence report against the revision petitioner as Crime No.7/1997 under section 55(a) of the Abkari Act. He produced the contraband articles before the court on the next day along with Ext.P3 requisition for chemical analysis and it was sent for analysis from court and Ext.P4 chemical analysis report was obtained. He questioned the witnesses and recorded their statement and he submitted the final report.

9. PW3 was an independent witness to the incident and the seizure but he did not support the case of the prosecution, though, he had admitted in his signature in Ext.P1 mahazar and also on the label. He had admitted that he knew the revision petitioner. So it is clear from his evidence that he is now trying to help the revision petitioner.

10. PW1 had deposed that, while he along with PW2 were doing petrol duty, he saw the revision petitioner coming with MO1 cannas and on seeing the excise parties, he is tried to go away from the place. So he stopped him and on examination

of the contents, it was revealed that it was arrack and he had taken sample and sealed and labelled the same containing the signature of the witnesses and the revision petitioner and also himself. He arrested the revision petitioner and released him on bail. His evidence was supported by the evidence of PW2 excise guard.

11. It is settled law, that merely because, the independent witness did not support the case of the seizure is not a ground to disbelieve the case if the evidence of the official witnesses can be relied on by the court. There is nothing brought out to discredit the evidence of PWs 1 and 2 regarding the seizure and arrest of the revision petitioner. Further, it is seen from the property list that the articles reached before the court on the next day itself. There is no delay in producing the articles. Ext.P4 chemical analysis report shows that it contained 20.11% by volume of ethyl alcohol, which is for below the standard provided for arrack by the Government, which is being sold from the Government depots. So, it is clear that it is illegally manufactured arrack possession which is illegal and punishable under section 55(a) of the Abkari Act as the law stood then. So, the courts below were perfectly justified in convicting the revision petitioner for the offence under section 55(a) of the Abkari Act and the concurrent findings of the court

below on this aspect do not call for any interference.

12. The court below had sentenced the revision petitioner to undergo simple imprisonment for one year and also to pay a fine of Rs.25,000/- in default to undergo simple imprisonment for six months, and this was confirmed by the appellate court. The fine of Rs.25,000/- imposed by the court below is minimum fine as per the law stood at that time and as per section 55(a) of the Abkari Act, the Magistrate was empowered to impose fine more than Rs.5000/- as well. This was confirmed by the appellate court. Considering the fact that minimum fine of Rs.25000/- has already been imposed with default sentence, this court feels that some leniency can be shown in the substantive sentence as well. So reducing the substantive sentence to three months imprisonment will be sufficient, while retaining the fine with default sentence and that will meet the ends of justice. So, the substantive sentence of one year simple imprisonment passed by the court below is reduced to three months simple imprisonment and fine with default sentence is confirmed. So, the sentence is modified as follows:-

The revision petitioner is sentenced to undergo simple imprisonment for three months and also to pay a fine of Rs.25000/- in default to undergo simple imprisonment for three

months.

With the above modification of the sentence alone, the revision petition is allowed in part and disposed of accordingly. Office is directed to communicate this order to the concerned court immediately.

**Sd/-
K.RAMAKRISHNAN, JUDGE**

R.AV

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PA TO JUDGE