

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN**

**TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936**

**Crl.Rev.Pet.No. 2199 of 2003 ( )**  
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**AGAINST THE JUDGMENT IN Crl. APPEAL 9/2001 of II ADDL. SESSIONS COURT,  
PALAKKAD, DATED 09-10-2002**

**&**

**AGAINST THE JUDGMENT IN CC 261/1997 of J.M.F.C.,  
MANNARKAD, DATED 15-12-2000**

**REVISION PETITIONER(S):**  
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**SUBRAMANIAN,  
S/O. ANGANNA THEVAR,  
SAMBARCODE,  
SHOLAYUR,  
MANNARKKAD,  
PALAKKAD (DISTRICT)**

**BY ADVS.SRI.SAJAN VARGHEESE K.  
SRI.LIJU. M.P**

**RESPONDENT(S):**  
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**STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.**

**BY PUBLIC PROSECUTOR SMT. V.H. JASMINE.**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON  
03-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

SS

**K. RAMAKRISHNAN, J.**

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Crl.R.P.No.2199 of 2003  
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Dated this the 3<sup>rd</sup> day of February, 2015

**ORDER**

Accused in C.C.No.261/1997 on the file of the Judicial First Class Magistrate Court, Mannarkkad, is the revision petitioner herein. The revision petitioner was charge-sheeted by the Sub Inspector of Police, Agali, in Crime No.87/1997 of Agali police station, under Section 55 (a) & (h) of Abkari Act.

2. The case of the prosecution in nut shell was that, on 10.04.1997 at about 5.30 p.m., the revision petitioner was found to be in possession of 2 liters of arrack, at the side of Agali-Samparkode road and engaged in sale of the same in violation of the Provisions of Abkari Act and thereby he had committed the offence punishable under Section 55(a) & (h) of the Kerala Abkari Act.

3. After investigation, final report was filed before the Judicial First Class Magistrate Court,

Mannarkad, and the case was taken on file as C.C.No.261/1997. When the revision petitioner appeared before the court below, the particulars of offence were read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 5 were examined and Exts.P1 to P4 and MO1 series were marked on the side of the prosecution. After closure of the prosecution evidence, the revision petitioner was questioned under Section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution evidence and he had further stated that, he had not committed any offence and no article was seized from his possession and he was falsely implicated in the case. No defence evidence was adduced on his side. After considering the evidence on record, the court below found the revision petitioner not guilty under Section 55(h) of the Abkari Act and acquitted him of that charge under Section

255(1) of the Code of Criminal Procedure, but the learned magistrate found the revision petitioner guilty under Section 55(a) of Abkari Act and convicted him thereunder and sentenced him to undergo simple imprisonment for six months and also to pay a fine of ₹ 5,000/-, in default to undergo simple imprisonment for three months more. Aggrieved by the same, he filed criminal appeal 9/2001 before the Sessions Court, Palakkad, which was made over to Second Additional Sessions Court, Palakkad, for disposal and the learned Additional Sessions Judge 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.

4. Heard the counsel for the revision petitioner and learned Public Prosecutor.

5. The counsel for the revision petitioner submitted that, the detection and major part of the

investigation was conducted by PW1, the Assistant Sub Inspector of Police, who was not an abkari officer, so the detection is illegal and as such he is entitled to get acquittal on that ground. He had also submitted that, the evidence is not sufficient to prove the detection as well.

6. On the other hand, the learned Public Prosecutor supported the concurrent findings of the court below on this aspect.

7. The case of the prosecution as emerged from the prosecution witnesses was that, on 10.04.1997 at about 5.30 p.m., while PW1, who was working as Assistant Sub Inspector of Police, Agali police station, was doing patrol duty along with the patrol party and when they reached near the place of occurrence, they saw the revision petitioner standing on the side of the road with a bottle and glass in his hand and on seeing the police party, he tried to go away from that place. So they stopped him and when PW1 examined his body, he found a bottle containing half a

liter of liquor and another bottle by the side of him, which also contained 1<sup>1/2</sup> liter of liquor. On examination he was satisfied that it was arrack. He had also found a glass with him and he took sample in the presence of PWs 2 and 3 and sealed the bottles with sample bottle and seized the same as per Ext.P1 mahazar. Thereafter, he arrested the revision petitioner and came to police station and registered Ext.P2 first information report as Crime No.87/1997 of Agali police station under Section 55(a) and (h) of Abkari Act. Thereafter he himself had conducted the investigation. He went to the place of occurrence and prepared Ext.P3 scene mahazar in the presence of PW4 and another. He produced the revision petitioner along with the articles before court and on the basis of the request made by the investigating officer, the sample was sent to chemical analysis and Ext.P4 report was obtained, which shows that, it contained ethyl alcohol. Thereafter, the investigation was undertaken by PW5, the Sub Inspector of the police station, who verified

the investigation conducted by PW1 and submitted final report.

8. PWs 2 and 3 though admitted their signatures in Ext.P1, denied having seen the seizure. PW1 had deposed about the seizure and the formalities complied by him for preparation of sample and seizure by Ext.P1 mahazar. Though he was cross examined at length, nothing was brought out to discredit his evidence on this aspect. So the submission made by the counsel for the revision petitioner that prosecution has not proved the arrest of the revision petitioner along with the contraband article has no merit, as there is nothing brought out to discredit the evidence of the official witness/ PW1 and the article seized was arrack and the same is liable to be rejected.

9. The question is whether the seizure was proper and it was done by an authorised officer. Admittedly, PW1 was an Assistant Sub Inspector of police. The lower court as well as the appellate court had come to

the conclusion that, there was no suggestion given to PW1 that, whether he was an Assistant Sub Inspector or an Additional Sub Inspector. If really, he was an Additional Sub Inspector at the time, there was a duty cast on him to say that, he was an Additional Sub Inspector, as the police officers were well aware of the fact that the Assistant Sub Inspector of police were not the authorised abkari officer as defined under the Abkari Act and they have been empowered to exercise the powers under the Abkari Act as an Abkari officer as per SRO No.321/96 dated 29.03.1996 and before that, they have no power to detect abkari offences. This was so held in the decisions reported in **Subash v. State of Kerala (2008(2) KLT 1047)**, **Baiju and others v. State of Kerala (2011(1) KHC 518)** and **Hashim v. Assistant Sub Inspector (2014(2) KLT 346)**. The question whether any detection made by the not-empowered officer is valid or not in offences under the Prevention of Immoral Traffic Act (Immoral Traffic

Prevention Act, 1950) was considered by this court in the decision reported in **Shajahan and others v. State of Kerala (2014(2) KHC 4)**. In all these cases, it was observed that, if any detection has been made by an officer not-empowered to detect a crime is not valid in law and no conviction can be based on such detection. Admittedly, the detection and major portion of the investigation was conducted by the Assistant Sub Inspector of police /PW1, who is not an abkari officer as defined under the Abkari Act at the time and as such, the detection is not valid in law and the conviction entered on that detection and seizure is unsustainable in law in view of the dictum laid down by the decision cited(supra). So the courts below were not justified in convicting the revision petitioner for the offence under Section 55(a) of Abkari Act and he is entitled to get acquittal of the charge levelled against him, giving him the benefit of the dictum laid down in the above decisions.

In the result, the revision petition is allowed and

the order of conviction and sentence passed by the courts below against the revision petitioner under Section 55(a) of the Abkari Act are hereby set aside and he is acquitted of the charge levelled against him, giving him the benefit of the dictum laid down in the decisions cited(supra). He is set at liberty. The bail bond executed by him will stand cancelled. If any fine amount has been remitted by him, the lower court is directed to refund the same to the revision petitioner on making an application before that court for that purpose.

Office is directed to communicate this order to the concerned court, immediately.

Sd/-

**K. RAMAKRISHNAN, JUDGE**

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P.A. to Judge

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