

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

Crl.Rev.Pet.No. 2323 of 2003 ()

**AGAINST THE ORDER/JUDGMENT IN CRA 299/2001 of ADDL.SESIONS COURT
(ADHOC)-II, ALAPPUZHA DATED 26-06-2003**

**AGAINST THE ORDER/JUDGMENT IN SC 88/1999 of ASST.SESIONS COURT,
CHERTHALA DATED 07-09-2001**

REVISION PETITIONERS/APPELLANTS/ACCUSED:

- 1. SUNIL,S/O. MATHU, KALLATTU HOUSE,
MUHAMMA PANCHAYATH WARD NO.4,
ALAPPUZHA DIST.**
- 2. ASHARAF, S/O. KOCHAHMED, KANNITTALYIL HOUSE,
WARD NO.V OF THANEERMUKKOM PANCHAYATH,
ALAPPUZHA DIST**

BY ADV. SRI.C.C.THOMAS (SR.)

RESPONDENT/COMPLAINANT

**STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULM**

BY PUBLIC PROSECUTOR SMT. JASMINE V.H

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
19-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

SMM

K.RAMAKRISHNAN,J.

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Crl.R.P 2323 of 2003

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Dated this the 19th day of January,2015.

ORDER

Accused in S.C No.88/99 on the file of the Assistant Sessions Court, Cherthala are the revision petitioners herein.

2. The revision petitioners are charge sheeted by the Sub Inspector of Police, Muhamma in Crime No.212/97 of Muhamma Police Station under Section 55(a) of Abkari Act.

3. The case of the prosecution in nutshell was that on 16-9-1997 at about 1.30 p.m, the accused were found to be in possession of 48 bottles of Indian made foreign liquor having a total quantity of 27 litres and found transiting the same in the autorickshaw bearing No.KL-4C/1844 in violation of the provisions of Abkari Act and thereby, they have committed the offence punishable under Section 55(a) and 67(B) of Abkari Act.

4. After investigation, final report was filed and it was taken on file as C.P No.7/98 on the file of the Judicial First Class Magistrate II, Cherthala and thereafter the case was committed to Sessions Court, Alappuzha where it was

taken on file as S.C No.88/99 and thereafter, it was made over to Assistant Sessions Court, Cherthala for disposal.

5. When the revision petitioners appeared before the Assistant Sessions Court, Cherthala, after hearing both sides, charge under Section 55(a) of the Kerala Abkari Act was framed and the same was read over and explained to them and they pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 9 were examined and Exts.P1 to P3 and MOs 1 and 2 series were marked on their side. After closure of the prosecution evidence, the revision petitioners were questioned under Section 313 of Code of Criminal Procedure and they denied all the incriminating circumstances brought against them in the prosecution evidence. They have further stated they had not committed any offence and innocent at the same. They have further stated they were falsely implicated in the case and they were not travelling in the vehicle. Dws 1 to 3 were examined and Ext.D1 was produced to prove that fact. After considering the evidence on record, the

court below found the revision petitioners guilty under Section 55(a) of Abkari Act and convicted them thereunder and sentenced them to undergo R.I for 3 years each and also to pay a fine of Rs.1,00,000/- each and in default to undergo simple imprisonment for 6 months each. Aggrieved by the same, they filed Criminal Appeal No.299/01 before the Sessions Court, Alappuzha which was made over to Additional Sessions Court, Fast Track (Adhoc-II), Alappuzha for disposal. The learned Additional Session Judge dismissed the appeal confirming the order of conviction sentence passed by the court below. Aggrieved by the same, the present revision petition has been filed.

6. Heard the Counsel for the revision petitioners and the Public Prosecutor.

7. The counsel for the revision petitioners submitted that even assuming that the entire prosecution case is admitted, the offence will not come under Section 55(a) of Abkari Act and it may only fall under Section 63 of Abkari Act. So the conviction and sentence passed by the court

below for the offence under Section 55(a) of Abkari Act is not sustainable.

8. The Public Prosecutor supported the concurrent findings of the court below on the ground that huge quantity of foreign liquor was transported and as such it cannot be said that they had done it without any intention for sale and no explanation forthcoming from their side for possession of such huge quantity.

9. I have gone through the judgments of both courts. On going through the judgments of both courts and also after perusal of the records and the appreciation of evidence of PWs 1 to 9 by the courts below, the findings arrived at by the court below that the accused persons were found to be in possession of 48 bottles of Indian made foreign liquor and found transporting the same in the autorickshaw bearing No.KL-4C/1844 and they were not having any document with them at that time appears to be just and proper and no illegality has been committed by the courts below in appreciating the evidence in this regard warranting interference at the

hands of this Court. The fact that this in excess quantity is also not in dispute. So from the evidence it is clear that they were in possession of 48 bottles of Indian made foreign liquor (750 ml and 350 ml each) and total quantity is 27 litres which is in excess quantity which a person is not entitled to possess. Further it is seen from the evidence that it is not a prohibited item in Kerala and it was permitted to be sold in Kerala also. This was spoken to by PW5 and also it is clear from the descriptions of bottles mentioned in Ext.P1 Seizure Mahazar also. So under the circumstances, this Court has held in several decisions that mere possession of licit liquor will not be an offence falling under Section 55(a) of Abkari Act and even if it is in excess quantity that may fall under Section 63 of the Abkari Act only. In the decision reported in **Raman vs. State of Kerala (2007(4) KLT 223)**, this Court has held that mere possession of foreign liquor in excess quantity may amount to violation of provisions of Foreign Liquor Rules and attract punishment under Section 63 only. The same view is also in the decision

reported in **Sobichan vs. State of Kerala (2013 (3) KLT SN 89 (C.No.93))**, **Sabu vs. State of Kerala (2003(2) KLT 173)** and **Nobbey and Another vs. State of Kerala and Others (2011(1))** So in view of the dictum laid down in the above decisions, even assuming that the articles seized was foreign liquor which has not been proved as a prohibited item and not expected to be sold in Kerala, the finding of the court below that the accused have committed the offence punishable under Section 55(a) of Abkari Act is not sustainable and at the most, they can be convicted and sentenced for the offence under Section 63 of Abkari Act for possession of excess quantity without any valid documents especially when it was proved by the documents produced by the prosecution itself that it is a licit liquor permissible to be sold in Kerala.

10. So under the circumstances, the finding of the court below that the revision petitioners have committed the offence punishable under Section 55 (a) of Abkari Act and consequential sentence imposed are set aside and

the same is modified as follows:-. The revision petitioners are found guilty under Section 63 of the Abkari Act and convicted thereunder and sentenced to pay a fine of Rs.5,000/-. In default to undergo simple imprisonment for 1 month each. With the above modification of the conviction and sentence, the revision petition is allowed in part and disposed of accordingly. Excess amount if any deposited or made after deducting fine imposed is directed to be returned to the party who deposited the amount.

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

K.RAMAKRISHNAN, JUDGE.

smm