

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

Crl.Rev.Pet.No. 2332 of 2003 (C)

CRA 102/2000 of ADDL.DISTRICT & SESSIONS COURT, FAST TRACK (ADHOC-
I), KOZHIKODE
CC 725/1997 of J.M.F.C, QUILANDY

REVISION PETITIONER(S):

REMANI, W/O KARUNAKARAN,
KIZHAKKEKARA VEETIL,
UNNIKULAM AMSOM, DESOM OF KOYILANDY

BY ADV. SRI.SUNNY MATHEW

RESPONDENT/RESPONDENT/COMPLAINANT

THE EXCISE INSPECTOR, BALUSSERY,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SMT. BINDU GOPINATH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 19-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

RAJA VIJAYARAGHAVAN.V. J

Crl.R.P. 2332 of 2003

Dated 19th August, 2015

ORDER

1. The sole accused in C.C.725 of 1997 on the file of the Judicial Magistrate of First Class, Quilandy is the revision petitioner. As per judgement dated 29.2.2000 she was convicted and sentenced to undergo simple imprisonment for two months and to pay a fine of Rs.25,000/- and in default to undergo simple imprisonment for one month.

2. The case of the prosecution is that on 21.10.1995 the petitioner was arrested by PW1 , the Excise Inspector , Balusseri Excise range at about 11.45 am, while she was found keeping in her possession three plastic containers containing illicit arrack of five litres each. Items were sampled and sealed and articles were forwarded to the Court.

Chemical examination revealed that the contraband seized contained ethyl alcohol. The investigation was conducted and the petitioner was charge sheeted.

3. In order to prove the case of the prosecution PW1 to 3 were examined and Exts.P1 to P6 were marked. MO1 series were produced and identified. It was on the basis of the evidence let in as above that the learned Magistrate came to the conclusion that the petitioner was guilty for the offence u/s 55(a) of the Abkari Act. The above conviction and sentence was confirmed by the appellate Court as well. It is the above concurrent findings that is challenged before this court in revision.

4. I have heard the learned counsel for the petitioner as well as the learned Public Prosecutor.

5. I have anxiously considered the evidence let in

by the prosecution as well as the judgment passed by the learned Magistrate as confirmed by the learned Sessions Judge. Both the Courts below on an evaluation of the evidence tendered by PW1 and 2 the officials, came to the conclusion that MO1 series plastic containers were seized from the house of the petitioner by the patrol party headed by PW1. Though the independent witness turned hostile both the Courts below have concurrently held that it has been established that MO1 series articles were seized from the bed room of the petitioner. Holding so it was held that the burden had shifted to the petitioner to explain the presence of illicit arrack and the petitioner had failed to offer a proper explanation. In my view the trial Court and the Appellate Court were fully justified in concluding that the petitioner was found in possession of illicit arrack as alleged by the prosecution.

6. The next question for consideration is whether the petitioner can be found guilty of the offence punishable under section 55(a) of the Abkari Act. The ingredients of an offence under section 55(a) of the Act is import, export, transport, transit or possess liquor or any intoxicating drug in contravention of the Act or any rule or order made under the Act. The allegation as against the petitioner is limited to possession of illicit liquor in contravention of the Act or rule or order made under the Act. The evidence let in by the prosecution witnesses as well as the complaint was analysed carefully and it does not appear from the evidence that the possession in question was under the course of the import, export, transport or transit. If that be the case, there is no question of attracting section 55 (a) of the Act in the light of **Rajeevan V Excise Inspector [1995 (1) KLT 38]**, **Purushan V State of Kerala [2002 (2) KLT 661]** as well as

Surendran Vs. Excise Inspector [2004 (1) KLT 404].

7. In **Surendran** (supra), a Division Bench of this Court has held that the case shall fall within the ambit of section 55(a) only when a person is found to be in possession of liquor in the course of import, export, transport or transit of the goods. It is further held that in the case of possession is merely with the knowledge of the goods having been illegally imported or manufactured, the case would fall within the mischief of section 58. The next question is whether section 58 of the Act can be attracted to the facts of the instant case. U/s 58, whoever, without lawful authority, has in his possession any quantity of liquor or of any intoxicating drug, knowing the same to have been unlawfully imported, transported or manufactured, or knowing the duty, tax or rental payable under this Act not to have been paid

therefor, shall be punishable provided therein. Therefore, to attract an offence under section 58 of the Act, the accused must be in possession of any quantity of liquor or any intoxicating drug without lawful authority knowing the same has been unlawfully imported, transported or manufactured or knowing that the tax, duty or rental payable under the Act had not been paid. 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 for the offence u/s 58. The possession must first be without lawful authority and secondly, with the knowledge that it has been either unlawfully imported or unlawfully transported or unlawfully manufactured. Possession of an unlawfully manufactured liquor is made punishable u/s 58 of the Act if that possession is with the knowledge that it is unlawfully manufactured. Therefore, the essential ingredients of the offence are (i) possession

of illicit liquor, (ii) with the knowledge that it is unlawfully manufactured. When section 58 mandates that to attract the offence, the person should be in possession of any quantity of liquor or any intoxicating drug knowing the same have been unlawfully imported, transported or manufactured. In the absence of a specific allegation in the complaint/final report that the petitioner has been in possession of liquor knowing that it was unlawfully manufactured, he cannot be convicted for the offence u/s 58 of the Abkari Act. (See Josekutty Vs. State of Kerala, [2013 (1) KHC 241].

8. In the case on hand as well there is no allegation in the complaint and neither PW1 nor PW2 has given evidence that the petitioner has been in possession of MO of the Indian Made Foreign Liquor allegedly seized from him with the knowledge that it contained unlawfully manufactured liquor. If that be

the case, he cannot be convicted for the offence u/s 58 of the Act.

7. But, still the petitioner is liable to be convicted as provided under section 63 of the Act. Section 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 this Act, and not otherwise provided for in this Act shall, on conviction before a Magistrate, be punished for each such willful act or omission with fine each at the time of commission of the offence may extend to Rs.2000/-.

8. In the instant case, a quantity of 5 litres was found from the possession of the petitioner. In such circumstances, the petitioner could only be convicted and sentenced as provided u/s 63 of the Abkari Act.

9. In the result, the revision petition is allowed in part. The conviction of the petitioner for the offence u/s 55(a) of the Abkari Act by the Judicial First Class Magistrate Court, Quilandy in C.C.No.725 of 1997 is modified u/s 63 of the Kerala Abkari Act. The sentence is modified to a fine of Rs.2,000/-. The Judicial First Class Magistrate Court, Quilandy, is directed to realise the fine from the petitioner, if not already deposited.

Sd/-

RAJA VIJAYARAGHAVAN.V.
Judge

MrCs

//True Copy//

P.S.ToJudge