

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

Crl.Rev.Pet.No. 898 of 2004 (B)

**AGAINST THE JUDGMENT IN CRL.A.NO.322/1999 of ADDL.SESIONS COURT, FAST
TRACK COURT-II (AD HOC COURT), THRISSUR DATED 05-03-2004**

**AGAINST THE JUDGMENT IN S.T.NO.1435/1996 of JUDICIAL FIRST CLASS MAGISTRATE
COURT, CHALAKUDY, DATED 27-07-1999**

REVISION PETITIONER(S)/APPELLANTS/ACCUSED NOS. 2 TO 4:

- 1. VIJAYAN,S/O.KUMARAN, GOWRIADATH HOUSE,
PULLUT VILLAGE - DESOM, THRISSUR DISTRICT.**
- 2. UPENDRAN, S/O.SANKARANARAYANAN,
PULIKKAL HOUSE, PUTHENCHIRA VILLAGE - DESOM,
THRISSUR DISTRICT.**
- 3. PADMAVATHY, W/O.PULIKKAL SANKARANARAYANAN, PULIKKAL HOUSE,
PUTHENCHIRA - VILLAGE, PUTHENCHIRA DESOM, THRISSUR DISTRICT.**

**BY ADVS.SRI.P.VIJAYA BHANU
SMT.P.MAYA**

RESPONDENT(S)/COMPLAINANT.:

**STATE OF KERALA, 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 10-08-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Bb

RAJA VIJAYARAGHAVAN V, J.

Crl.R.P.No.898 of 2004

Dated this the 10th day of August, 2015

O R D E R

This Petition is preferred under sections 397 read with section 401 of the Code of Criminal Procedure by the petitioners who are accused Nos.2 to 4 in S.T.No.1435/1996 on the files of the Judicial First Class Magistrate Court, Chalakkudy who stands convicted under section 55(i) of the Abkari Act.

2. The gist of the prosecution is that, on 06.09.1995 at 2 p.m., the first accused was found in possession of 20 liters of toddy for the purpose of sale without any license or authority from a petty shop owned by her situated on the northern side of the Chalakudy - Athirapilly road. She was arrested and the contraband articles were seized under Ext.P1 mahazar. According to the prosecution, accused Nos. 2 to 4 were the contractors and licensees of the Abkari

Range from 1994-1999 and they had supplied the toddy for sale to the first accused. It is based on the above allegation, the petitioners were arrayed as accused Nos.2 to 4.

3. On completion of investigation, the complaint was preferred before the court below by PW1, the Excise Inspector of Chalakudy Range. In order to prove the case of the prosecution, PW1 , the officer who detected the offence and who filed the complaint was examined. Through him Exts. P1 to P5 were marked. MOs 1 to 4 were produced and identified.

4. Banking on the solitary evidence of PW1, the court below came to the conclusion that the petitioners were guilty of the offence under section 55(i) of the Abkari Act.

5. Though the findings of conviction and sentence was challenged by filing Crl.A.No.322/1999 before the Court

of Sessions, Thrissur, the learned Additional Sessions Judge, as per judgment dated 05.03.2004, dismissed the appeal by confirming the conviction of the appellants, but, after reducing the sentence to simple imprisonment to 3 months instead of 1 year as ordered by the learned Magistrate and the fine portion was confirmed.

6. I have heard the learned counsel appearing for the petitioners and the learned Public Prosecutor.

7. The learned counsel for the petitioners would assail the conviction and sentence entered into by the courts below on various grounds. According to the learned counsel, PW1 had detected the offence, conducted the investigation and filed the complaint. The only connecting link between the seizure effected in the shop of the 1st accused with the petitioners herein is the alleged statement implicating the petitioners given by the 1st accused, and the same cannot

be the basis of a conviction, it is submitted.

8. The learned Public prosecutor supported the findings and argued that no interference was warranted.

9. A perusal of the records as well as the judgments rendered by the courts below would reveal that there is merit in the contentions raised by the learned counsel appearing for the petitioner. The only reference to the petitioners is in Exhibit P 1 mahazer in which it is stated that the 1st accused had disclosed that the petitioners 2 to 4 had supplied the toddy to her . No other evidence was let in by the prosecution to substantiate this aspect. The prosecution has not even produced any document to show that the petitioners were in fact the licensees during the relevant period.

10. The learned Sessions Judge had this to say while

confirming the conviction as against the petitioners .

"But as regards the appellants 2 to 4 are concerned, the Excise Inspector has not seen them inside the shop. They are roped in from the divulgence of the 1st appellant. Though there is no documentary evidence produced to show that they are the contractors of the Range or that they had in fact supplied the toddy to the 1st appellant for sale , they admitted that when questioned under 313 of the Cr.P.C. Hence the conviction of appellants 2 to 4 is also sustainable."

11. It is apparent that the petitioners have been convicted on the strength of the statement given by a co accused . No other evidence is before court . Merely because of the fact that the petitioners had not denied the fact that they are the licensees during the said period is not sufficient. There should be cogent and convincing evidence to show that the petitioners had any role to play in the above incident. Though it is alleged that the 1st accused had stated about the complicity of the petitioners, the same is unsubstantiated. No such statement has been proved in accordance with law. Even if it is treated as a confession , the same can not be treated as substantive evidence. No

other independent evidence is forthcoming. There is nothing in the evidence of PW1 which reveals the complicity of the petitioners. It is also not revealed from the prosecution records as to how the investigating officer had deduced that the petitioners herein were the contractors during the relevant period and it was the said persons who had supplied the toddy to the first accused. In the absence of reliable evidence to prove the complicity of the petitioners with the crime alleged, I am of the considered view that the petitioners are entitled to succeed.

In the result, the Criminal Revision Petition is allowed and the petitioners are acquitted of all charges.

Sd/-
**RAJA VIJAYARAGHAVAN V,
JUDGE.**

Bb

[True copy]

P.A to Judge