

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

Crl.Rev.Pet.No. 2958 of 2003 ()

AGAINST THE JUDGMENT IN CRA 156/2001 of SESSIONS COURT, KOZHIKODE

**AGAINST THE JUDGMENT IN SC 35/2000 of III ADDL. ASST. SESSIONS COURT,
KOZHIKODE**

REVISION PETITIONER(S)APPELLANT/ACCUSED:

**VISWAN,
S/o. IRUMBANCHEEDAN KUNNUMMAL SREEDHARAN,
RAROTH AMSOM, DEDAVOOR DESOM,
KOZHIKODE.**

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENT(S)/COMPLAINANT & STATE:

- 1. THE EXCISE INSPECTOR,
THAMARASSERI.**
- 2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20-
07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

C.R.R.P.No.2958 of 2003

Dated this the 20th day of July, 2015

ORDER

The Revision Petitioner, who is the appellant in Criminal Appeal No.156/2001 of Session Judge, Kozhikode challenged the concurrent conviction under Section 55(a) of the Abkari Act. He was accused in S.C.No.35/2000 of Asst. Session Judge(III Addl.), Kozhikode for offence punishable under Section 55(a) of the Abkari Act and sentenced to imprisonment for 6 months and to pay a fine of Rupees One lakh, in default of payment of fine, imprisonment for one month.

2. The facts necessary for indictment were that on 2.9.98 at 5.00 p.m., the Preventive Officer, Thamarassery was conducting patrol duty within his jurisdiction, when he reached at Kidavoor, the revision petitioner was found in possession of 2½ litres of arrack in a kannas. The preventive Officer intercepted him and seized the arrack, thereafter registered the above case. Excise Inspector, after completing investigation laid charge before Judicial

First Class Magistrate-1, Thamarasery, from there it was committed to Sessions Judge for trial.

3. During trial, prosecution examined PW1 to PW5 and marked Ext.P1 to P9 and MO1 in evidence. The incriminating circumstances brought out in evidence were denied by the revision petitioner while questioning him under Section 313 Cr.P.C. He was heard under Section 232 Cr.P.C. The revision petitioner examined DW1 in support of his defence. The trial court convicted him under Section 55(a) of the Abkari Act, against that he preferred an appeal which was dismissed by the appellate court.

4. The learned counsel appearing for the revision petitioner contented that sample seal was not obtained in the mahazar at the time of seizure of arrack. The seizure was on 2.9.98 and articles were produced before court only on 7.9.98. The delay in forwarding the seized article without proper explanation will cause prejudice to the revision petitioner, which was not considered by the courts below.

5. Revisional power can be exercised in order to identify the correctness and legality of the findings and to the regularity of the proceedings of the court below. The offence was detected by PW1, Preventive Officer. His evidence shows that on 2.9.98 at 5.00 pm, while he was conducting patrol duty with his excise party, he arrived at the place of occurrence, revision petitioner was found carrying MO1 kannas in his hand. On seeing the excise party, he became perplexed. On seeing this, PW1 obstructed him and inspected MO1 kannas, in which he detected 2½ litres of arrack. He took 200 ml of arrack from the kannas and sealed at the place of occurrence. The balance arrack was sealed at the place of occurrence. Ext.P2 is the seizure mahazar and Ext.P1 is the arrest memo. Reaching at the Excise Office, Ext.P3 occurrence report was prepared. PW2, Excise Guard also supported the evidence of PW1. These witnesses were cross-examined by the defence counsel. In cross-examination, both witnesses admitted that the sample was taken from the kannas in the possession of the revision petitioner and

the signature of the accused and the independent witnesses present there were obtained. Even though they were cross examined, nothing has been brought out to discredit their evidence.

6. The independent witnesses did not support the seizure of MO1. PW3 denied his signature in Ext.P2. But PW4 admitted his signature in Ext.P2 seizure mahazar and deposed that he did not see the alleged seizure. Even though, PW3 and PW4 did not support the prosecution case, PW4 admitted signature in Ext.P2, which was approved by the trial court and the appellate court. The final report was filed by PW5. His evidence shows that the seized articles were produced before him on 2.9.98. On the basis of that, he registered Ext.P3 occurrence report. Ext.P4 is the property list and Ext.P5 is the forwarding note. The accused was produced before court as per Ext.P6 remand report. The sample arrack was forwarded to chemical examiner's lab for examination through court. Ext.P7 is the chemical examination result, in which it is mentioned that the sample liquid contained 20.40% of

ethyl alcohol. A close scrutiny of the evidence of PW1, 2, 4 and 5 show that the alleged seizure was substantially complied by the prosecution and no reason to disbelieve the evidence of these witnesses. No personal enmity alleged against them for taking a false case.

7. In this context, I have considered the defence evidence adduced by DW1. DW1 stated that the wife of revision petitioner told that the revision petitioner was taken away by the Excise officials. Even though, such a statement was given by DW1, no enmity was alleged against the excise officials. He deposed that nothing was recovered from the possession of the revision petitioner. The Excise officials searched near the nearby canal seized the arrack and thereafter took the accused from his house. This defence version is not believable. Therefore, the seizure of arrack was proved by the prosecution.

8. The mere possession of arrack in any form without any authority would not attract an offence under Section 55(a) of the Abkari Act. According to Section 8 of the Abkari Act, no person shall manufacture, import

export, possess, store, distribute or sell arrack in any form. If any person contravenes any provisions of 8(1) of Abkari Act, he shall be punishable under the Act. In **Gopan Vs. State of Kerala, (2007(3) KLT 443)** it was held that “mere possession of arrack in any form without any authority would only attract S.8 and not S.58.”

The allegation in this case is that, accused is in possession of 2½ litres of arrack. Therefore, the conviction under section 55(a) of the Abkari Act is set aside and revision petitioner is convicted under Section 8 (1) and (2) of the Abkari Act and sentenced as follows;

He is sentenced to imprisonment for three months and pay a fine of Rupees One lakh, under Section 8(1) (2) of the Abkari Act, in default of payment of fine, simple imprisonment of 15 days. The period of detention if any, undergone by him during the investigation, enquiry or trial shall be set-off against the term of imprisonment. The revision petitioner is directed to surrender in the trial court to undergo the modified sentence, failing which the trial court is directed to issue Non-bailable Warrant

forthwith.

STK

//TRUE COPY//

Sd/-
P.D. RAJAN,
JUDGE

P.A. TO JUDGE