

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

Crl.Rev.Pet.No. 3045 of 2003 ()

AGAINST THE JUDGMENT IN CRA 54/2002 OF THE SESSIONS COURT, MANJERI

AGAINST THE JUDGMENT IN CC 319/1998 of J.M.F.C., MALAPPURAM

REVISION PETITIONER(S):

**PADINJAREVEETIL VASU,
S/o.VELAYUDHAN,
NEDIYIRIPPU,
MALAPPURAM DISTRICT.**

**BY ADVS.SRI.BABU S. NAIR
SMT.SWAPNA HASSAN**

RESPONDENT(S)/STATE:

**THE STATE OF KERALA,
REPRESENTED BY EXCISE INSPECTOR,
MALAPPURAM - THROUGH
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.**

BY PUBLIC PROSECUTOR SRI. N. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl.R.P.3045 of 2003

Dated this the 8th day of September, 2015

ORDER

Revision petitioner is the appellant in Crl.Appeal 54/02 on the file of Sessions Judge, Manjeri challenges the judgment of concurrent findings of conviction under section 55(a) of the Abkari Act (hereinafter referred to as 'Act'). He was accused in C.C.319/98 of Judicial First Class Magistrate, Malapuram and convicted under Section 55(a) of the Abkari Act and sentenced to imprisonment for 6 months and fine of Rs.5000/-, in default, simple imprisonment for one month.

2. The prosecution allegation was that on 26.03.97 at 6 pm, the Excise Officials detected 70 bottles of Indian made foreign liquor each containing 180 ml from the property of revision petitioner, which was manufactured in the State of Karnataka and meant for sale only in Karnataka State. The Excise Officials seized The contraband liquor after preparing the mahazar. Thereafter, they registered a crime 9/97 and after completing investigation, Excise Inspector, Malappuram

laid charge before Judicial first Class Magistrate, Malappuram.

3. To prove the offence, prosecution examined PW1 to PW5 and marked Ext.P1 to P5. The incriminating circumstances brought out in evidence were denied by the accused while questioning him. He did not adduce any defence evidence. The trial court convicted the accused. Against that he filed the above appeal, which was dismissed by the appellate court. Being aggrieved by that, he approached this court with this revision petition.

4. The learned counsel appearing for the revision petitioner contended that, there is no evidence to prove the alleged seizure. Forwarding note was also not furnished in this case along with the seized articles before court. The possession of the house was also not proved. When there is no evidence to prove the possession, the conviction is unsustainable.

5. The learned Public Prosecutor submitted that contraband articles were seized from the possession of accused while lifting it from his property and no reason to

interfere in the findings of the courts below.

6. The power of the revisional jurisdiction of the High Court in criminal cases is narrower and limited than its appellate power, which is discretionary and it cannot be invoked as of right as in the case of appellate jurisdiction. The object of conferring revisional power to the High Court is to correct grave miscarriage of justice arising from erroneous or defective orders. While exercising this power, it is justified only to set right grave failure of justice and not merely to rectify every error.

7. For ascertaining the illegality committed by the court below, I have gone through the oral evidence of PW2 who was the Preventive Officer attached to Excise Circle Office, Manjeri. His evidence shows that on 26.3.97 at 6 pm he found, accused was taking a box from the property near his house. When he reached near him and examined the cardboard box, detected 35 bottles of Indian made foreign liquor each having 180 ml. in the box. The label was identified, it was fully sealed. He examined the liquid inside the bottle and confirmed it as Indian

made foreign liquor, permissible to sell in the state of Karnataka. He also seized another box that was also containing 35 bottles. Those foreign liquors were seized after preparing Ext.P1 mahazar. PW1 and PW3 attested Ext.P1 mahazar. Even though they admitted their signature, they denied the alleged seizure from the place as stated by PW2.

8. Another Excise Preventive Officer supported the seizure. PW4, in his evidence admitted that while the revision petitioner was taking a box from the property near his house, PW2 intervenes and examined the content inside the box. He also gave a similar version given by PW2. His evidence shows that the bottles found in the cardboard boxes were sealed and labelled similarly. Two bottles were taken as samples. Those seized articles were marked as MO1 series and MO2 series. PW5, after completing investigation, laid charge before court. He sent Ext.P2 requisition for sending the sample for chemical examination and Ext.P3 is the chemical examination report. Ext.P4 is the crime and concurrence

report and Ext.P5 is the property list. Analysing the evidence of PW2, PW4 and PW5, 70 bottles of foreign liquor was seized as alleged by the prosecution and no reason to disbelieve the seizure.

9. A close analysis of the evidence shows that, the revision petitioner was in possession of excess quantity of foreign liquor which is an offence punishable under Section 63 of the Abkari Act. In the result, the conviction under Section 55(a) of the Abkari Act is set aside and revision petitioner is convicted under Section 63 of the Abkari Act and sentenced to pay a fine of Rs.2000/- (Rupees Two thousand only) and in default of payment of fine, imprisonment for 2 months and this revision petition is partly allowed. The revision petitioner is directed to surrender before trial court within 30 days from today to undergo the sentence, failing which, Judicial First Class Magistrate, Malappuram shall issue Non-bailable Warrant against the accused.

STK

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P.A. TO JUDGESd/-
P.D. RAJAN,
JUDGE