

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

Crl.Rev.Pet.No. 3115 of 2003 ()

**AGAINST THE JUDGMENT IN CRL. APPEAL 54/1999 of ADDL. SESSIONS COURT
(ADHOC)-II, MANJERI**

AGAINST THE JUDGMENT IN CC 413/1997 of JFCM- I,MANJERI

REVISION PETITIONER(S):

**CHEKKU,
S/O.AYYAPPANKUTTY,
EDAVANNA,
MALAPPURAM DISTRICT**

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S):

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

BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24-
11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.3115 of 2003

Dated this the 24th day of November, 2015

ORDER

The revision petitioner was accused in C.C.413/97 on the file of Judicial First Class Magistrate-1, Manjeri for having committed offence under Section 55(a) of the Abkari Act. The charge against him is that, on 15.08.96 at 16.45 hours, the Sub Inspector of Police, Edavana was conducting patrol duty within his jurisdiction, when he reached at Kurisumpady, the accused was found carrying a bag and upon suspicion, the police party intercepted him and inspected the bag in which they detected 8 bottles of foreign liquor, each containing 375 ml. He was arrested and the contraband articles were seized. Reaching at the Police Station, registered a crime and after completing investigation, laid charge before Judicial First Class Magistrate-1, Manjeri.

2. During trial, prosecution examined PW1 to PW7 and marked Exts.P1 to P4 as documentary evidence. The

material objects were marked as MO1 and MO2. 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 him and sentenced to undergo rigorous imprisonment for one month and pay a fine of Rs.25,000/-, in default of payment of fine, rigorous imprisonment for 3 months. Against that, he preferred the Crl. Appeal 54/1999 before Addl. Sessions Judge(Adhoc),Fast Track-II, Manjeri, where the conviction under Section 55(a) was set aside and revision petitioner was convicted for the offence under Section 58 of the Act. Being aggrieved by that judgment she approached this court with this revision petition.

3. The learned counsel appearing for the revision petitioner contended that the conviction and sentence passed by the appellate court is illegal. He was found in possession of excess quantity of foreign liquor which will attract the offence under Section 63 of the Abkari Act and hence he prays to set aside the above conviction.

4. Section 63 of the Abkari Act reads as follows.

“Whoever is guilty of any act or intentional omission in contravention of any of the provisions of this 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 wilful act or omission with fine (which may extend to five thousand rupees or with imprisonment for a term which may extend to two years or with both;)”

5. In this context, I have gone through the oral evidence of PW3, who is the detecting officer. The evidence of PW3 shows that on 15.08.96, he was conducting patrol duty with the police party and reached at Kurisumpady, he found the accused carrying a bag on his shoulder. Upon suspicion, PW1 intercepted the accused and inspected the bag, in which he detected 8 bottles of foreign liquor each containing 375 ml., Red Star xxx rum. These liquor bottles were marked as MO1 series in the trial court. The bag in which the bottles were carried is marked as MO2 and he prepared Ext.P2 seizure mahazar. Reaching at the Police Station, he registered a crime and Ext.P3 is the FIR. Foreign liquor seized were sent over for chemical examination. Ext.P4 is the

chemical examination result. Analysing the evidence, it is found that they seized the excess quantity of foreign liquor.

6. PW2 did not support the prosecution case. But he admitted his signature in Ext.P1 mahazar. PW1 is also another police constable who supported the evidence of PW3. PW4 is another attester of Ext.P1 mahazar. PW2 and PW4 are the independent witnesses who did not support the seizure. But they admitted the signature in Ext.P1. PW5 admitted signature in Ext.P2 seizure mahazar. PW6 completed the investigation and laid charge before court. PW7 investigated the case and questioned the witnesses. He produced the accused before court. He prepared Ext.P1 scene mahazar. He recorded the witness statement. Analysing the evidence it is found that the seizure of the foreign liquor from the possession of the revision petitioner was proved. The trial court convicted him under Section 55(a) of the Act, which was set aside by the appellate court and convicted him under Section 58 of the Abkari Act.

7. This court in **Sabu V. State of Kerala ILR (2003 (3)Ker. 130)** held that, if the accused transports liquor purchased from Beverages Corporation for a house warming party slightly in excess of the permissible quantity, such offence comes only under Section 63 of the Abkari Act. In another decision **Raman V. State of Kerala (2007(4) KLT 223)** it was held that possession of foreign liquor in excess of prescribed quantity amounts to violation of provisions of Foreign Liquor Rules and attracts punishment under Section 63 of the Act.

In the result, the conviction under Section 58 of the Abkari Act is set aside and revision petitioner is convicted under Section 63 of the Act and sentenced to pay fine of Rs.5000/-, in default of payment of fine, imprisonment for 6 months. This revision petition is partly allowed.

STK

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P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE