

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

Cr1.Rev.Pet.No. 892 of 2002 ()

Cr1.A 122/1999 of ADDITIONAL SESSIONS JUDGE (ADHOC), FAST TRACK
COURT NO.I, THRISSUR

CC 135/1997 of J.M.F.C.,WADAKKANCHERY

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SUBRAMANIAN @ ANGU,
S/O.VELLACHAMIS GOWUNDER, CHEERAKUZHI VEETIL
VADAKETHARA VILLAGE, PAZHAYANNUR
THRISUR DISTRICT.

BY ADV. SRI.P.K.ANIL

RESPONDENT(S)/RESPONDENTS :

1. THE EXCISE INSPECTOR,
PAZHAYANNUR.

2. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.N.SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 20-05-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

stu

K.HARILAL, J.

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Crl.R.P.No. 892 of 2002

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Dated this the 20th day of May, 2015

ORDER

The revision petitioner is the accused in C.C.No.135/1997 on the files of the Judicial First Class Magistrate's Court, Vadakkancherry. He was prosecuted for the offence punishable under Section 55(a) of the Abkari Act. After trial, he was found guilty of the said offence and convicted thereunder. He was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹25,000/- and in default, to undergo rigorous imprisonment for a period of three months. Feeling aggrieved, though he had preferred Crl.A.No.122/1999 before the Additional Sessions Judge (Adhoc) Fast Track No.I, Trichur, after re-appreciating the evidence on record, the learned Sessions Judge also confirmed the conviction and sentence as such without any interference. The

legality and propriety of the concurrent findings of conviction and sentence imposed by the courts below are under challenge in this revision petition.

2. The prosecution case in brief is that on 8.1.1997 at 8 p.m., on the public road in front of the Pazhayannur Govt. Hospital, the accused was found in possession and moving with 4 bottles each containing 375 ml. of Empees Fine Brandy, which was intended for sale in Tamil Nadu. The accused pleaded not guilty. According to him, he was an anti-liquor propagator and he displayed posters stating that sale of arrack is going on there with the approval of Excise Officials and infuriated by the above act of the accused, the Excise Officials falsely implicated him in the said offence.

3. The short question that arises for consideration is, whether there is any illegality or impropriety in the findings whereby the courts below found the accused guilty of the offence under Section 55(a) of the Abkari Act? Put it differently, the question is, whether the prosecution has

succeeded in proving the charge against the accused beyond doubt?

4. To prove the prosecution case, it is seen that PWs.1 to 3 were examined and Exts.P1 to P3 and M.O.1 series of bottles were marked.

5. In this revision petition, the main point canvased by the revision petitioner is that the prosecution has miserably failed to prove the arrest and seizure of the contraband from the place as alleged by the prosecution. It is also contended that the conviction is based on the evidence of PWs.1 and 3; but their evidence is mutually opposite, destructive and untrustworthy. So also, the said evidence is contradictory to Ext.P1 mahazar and Ext.P2 occurrence report. Thus, the prosecution has failed to prove the case beyond doubt.

6. Per contra, the learned Public Prosecutor advanced arguments to justify the conviction entered and sentence imposed by the court below. According to him, the

prosecution has succeeded in proving the charge alleged against the accused beyond doubt.

7. Going by the impugned judgment, it could be seen that as rightly submitted by the revision petitioner, conviction is based on the sole evidence of the official witnesses PWs.1 and 3. It is the case of the accused that the oral evidence given by PWs.1 and 3 is contradictory as regards the place of arrest and seizure. According to PW1, he was sitting on the back side of the jeep and PW3 was sitting in the front side; the accused was standing in front of the gate of the hospital and the jeep stopped at a place far away from the place where he was standing. Then they walked towards the hospital gate, reached there, arrested the accused and seized the contraband from his hand. After the recovery, the driver brought the jeep to the place of occurrence. But according to PW3, the jeep stopped in front of the accused who was standing in front of the gate of hospital. Obviously, the version given by PWs.1 and 3 are

contradictory. But the court below discarded the said contradiction as an immaterial one. It is pertinent to note that no document had been produced before the trial court by the prosecution to show that the accused was arrested from the place as alleged by the prosecution. In **Ramankutty v. Excise Inspector, Chelanur Range** [2013 (3) KHC 308], this Court held that arrest memo is a crucial document to be prepared at the time of arrest. Non production thereof is fatal to the prosecution case. So, if arrest is not proved beyond doubt, the entire case set up by the prosecution would fall to ground. The prosecution has a definite case that the accused was carrying 4 bottles each containing 375 ml. of Indian Made Foreign Liquor in his hand. If that be so, when the recovery was from the person, the prosecution should have produced materials to show the arrest of the accused in compliance with the decision reported in **D.K. Basu v. State of West Bengal** [AIR 1997 (1) SC 610].

8. The settled legal position is that conviction can be based on the solitary evidence of the official witnesses, if the evidence of official witnesses is reliable and unblemished. On an analysis of the evidence of PWs.1 and 3, it is seen that though the courts below have admitted that the evidence of PWs.1 and 3 are contradictory, the courts below went wrong by discarding the same by ignoring the fact that the arrest of the accused with the contraband is the basis of the prosecution case, and conviction is based on that fact, which is not proved beyond doubt. The court below went wrong by relying on the evidence of PWs.1 and 3, the official witnesses, when their evidence is untrustworthy.

9. In the above view of the matter, I find that the prosecution has miserably failed to prove genesis of the incident as alleged by the prosecution. Therefore, in the above analysis, I find that the appreciation of evidence of PWs.1 and 3 is tainted with perversity and the same cannot

be relied on to convict the accused. The revision petitioner is entitled to get benefit of doubt.

10. In the result, the conviction entered and sentence imposed on the accused/revision petitioner will stand set aside and the revision petitioner is acquitted of the offence under Section 55(a) of the Abkari Act.

This revision petition is allowed.

Sd/-
K.HARILAL, JUDGE.

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P.Ato Judge