

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

Crl.Rev.Pet.No. 3342 of 2003 (D)

AGAINST THE JUDGMENT IN Crl.Appeal No. 139/2003 of ADDL.SESIONS
JUDGE (ADHOC-II), ERNAKULAM DATED 14-10-2003

AGAINST THE JUDGMENT IN SC 346/2001 of ASST. SESSIONS JUDGE,
MUVATTUPUZHA DATED 25-01-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED NO.1:

KAMALOLBHAVAN @ KAMALU,
S/O. KELA, KARAKKUZHI VEEDU,
KOTTAPPADY.

BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM
SMT.K.R.MONISHA
SMT.CHITHRA CHANDRASEKHARAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANTS:

1. STATE OF KERALA, REPRESENTED BY
S.I. OF POLICE, KOTTAPADY.
2. PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1 BY PUBLIC PROSECUTOR SRI. N. SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 17-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.3342 of 2003

Dated this the 17th day of November, 2015

ORDER

Revision petitioner was charge sheeted in S.C.No.346/2001 by the Asst. Sessions Judge, Muvattupuzha for having committed an offence u/s.55(a) of the Abkari Act. The charge against him was that on 29.4.1999 at 9.30 a.m., the Sub Inspector of Police, Kottappady Police Station got an information that the accused is selling illicit arrack at the canal bund near Poochakkara road at Moonnamthodu bhagom. He arrived at the place of occurrence, seized MO2 from the possession of the accused and MO1 under the culvert. He prepared Ext.P1 mahazar and seized MO1 and MO2 and took 375ml in three bottles as sample. The accused was arrested,

reaching at the Police Station, registered Crime No.14/1999. During investigation, it is revealed that two other persons included in Crime No.105/1999 of Kuruppampady Police Station were also involved in this crime and after completing investigation, they laid final report against A1 to A3 before Judicial First Class Magistrate-I, Muvattupuzha, from there it was committed to Sessions Court for trial.

2. During trial, prosecution examined PWs 1 to 5 and marked Exts.P1 to P5 as documentary evidence. The kannas seized from the place of occurrence were marked as MO1 and MO2. The incriminating circumstances brought out in evidence were denied by the accused while questioning them. They did not adduce any defence evidence. The trial Court acquitted A2 and A3 and convicted A1 u/s.55(a) of the Abkari Act and sentenced to

undergo simple imprisonment for one year and fine of ₹1 lakh. Against that, he preferred the above appeal, which was dismissed by the appellate Court. Being aggrieved by that, he preferred this revision petition.

3. Heard the learned counsel appearing for the revision petitioner and the learned public prosecutor. Revision petitioner contended that there is inordinate delay in producing the seized article before Court, which was not properly explained by the investigating officer. There is no independent corroboration to prove the allegation.

4. The revisional jurisdiction can be exercised for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed by a Court and also to consider the regularity of any proceedings of such inferior Court. Here,

the challenge is with regard to the concurrent finding of conviction of the Courts below.

5. PW1 to 3 are the occurrence witnesses. Of them, prosecution examined PW3 as the occurrence witness who was the Sub Inspector of Police, Kottappady. The evidence of PW3 shows that on 29.4.1999 at 9.30 a.m., he got reliable information about the incident, immediately he arrived at the canal bund road and accused was found standing near the canal bund. He intercepted him and interrogated, thereafter, inspected the black kannas and the content in it. During inspection, it is revealed that MO2 contains arrack. He disclosed that A2 and A3 entrusted him to sell the arrack and kept MO1 under the culvert and PW3 seized MO1 from the place of concealment. MO1 and MO2 were taken into custody after preparing Ext.P1 mahazar. Reaching at the Police

Station, he registered a Crime and Ext.P2 is the FIR. Ext.P3 is the arrest memo and the seized articles were produced before Court on 4.5.1999. Subsequently, arrack was forwarded to the chemical examiner's lab through Court. Ext.P5 is the chemical examination report. Analysing the oral evidence of PW3, it is found that he arrived at the place of occurrence on the date of incident and seized MO1 and MO2, but, there is no independent corroboration to the seizure.

6. The independent witnesses PW1 and PW2 who were present at the time of seizure of MO1 and MO2 did not support the prosecution case. PW1 deposed that he did not see the seizure and he signed in a blank paper. PW1 stated that when he reached there, the accused was found standing at the place of occurrence and MO1 and MO2 were found there. PW2 also gave similar evidence.

Analysing the evidence, it is found that there is no independent corroboration to the alleged seizure.

7. The prosecution story is based upon the evidence of PW3 who stated that on the same day at 5 a.m. clock, PW4 arrested A2 and A3 and registered another Crime No.105/1999 of Kuruppampady Police Station, It is revealed that A2 and A3 entrusted MO1 and MO2 to A1. PW4 admitted that he registered Crime No.105/1999 of Kuruppampady Police Station, but, that document was not marked in this case. The fact that A2 and A3 were arrested in that case is not proved. PW5 conducted investigation and laid charge before trial Court. But it is interesting that the circumstances under which A1 was arrested was not proved.

8. The revision petitioner contended that there is no explanation for the delay in producing the seized article

before Court, that contention is not sustainable in law. MO1 and MO2 were seized on 29.4.1999. It was produced before Court on 4.5.1999. He submitted that due to pressure of work, he could not produce the contraband articles before Court. But, it was retained under the custody of the Station Writer. According to section 40 (2) of the Abkari Act, every person arrested u/s.30 shall be produced before, and article seized shall be forwarded to, without unnecessary delay. The learned counsel for the revision petitioner submitted that under Section 102 (3) of the Code of Criminal Procedure, the word 'forthwith' is used. Section 34(2) of the Abkari Act says that the provisions of the Cr.P.C. shall apply in so far as they are not inconsistent with the provisions of this Act, to all arrests searches and seizures made under this Act. If that be the position, the evidence given by PW3 for

keeping the article in the custody is satisfactory and that will not help the revision petitioner.

9. The fundamental rule in a criminal case is that one person is presumed as innocent till he is proved to be guilty. This rule actually means that a person accused of a crime is not bound to make a statement or offer any explanation about the circumstances which throws suspicion upon him. It is the duty of the prosecution to prove the guilt beyond reasonable doubt. There may be exception where the rules of presumption applies in certain cases. In such case, a statutory presumption with regard to the proved facts and circumstances may arise which will help in reaching a conclusion about the guilt of the accused. But, he is not entitled to get the benefit of doubt in the nature of seizure. When a doubt is created in the credibility of the prosecution case, the accused is

entitled to get that benefit. Here, the evidence of PW3 and PW4 are inconsistent with each other regarding the alleged possession. Therefore, when prosecution fails to prove the seizure with independent corroboration, the accused is entitled to get the benefit of doubt. In the result, conviction u/s.55(a) of the Abkari Act is set aside and the accused is set at liberty.

Crl.R.P.is allowed as above.

P.D. RAJAN, JUDGE.

acd