

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

Crl.Rev.Pet.No. 1439 of 2004 ()

AGAINST THE JUDGMENT IN CRL.A 52/2002 of ADDL.SESIONS
COURT,THODUPUZZHA DATED 05-04-2004

AGAINST THE JUDGMENT IN SC 63/2000 of ASSISTANT SESSIONS
COURT,KATTAPPANA DATED 03-04-2002

REVISION PETITIONER/APPELLANT NO.1/ACCUSED NO.1::

K.K. ABRAHAM @ KUNJUKUTTY,
S/O. KURUVILA, KARUKASSERIL VEEDU,
CHAKKUPALLAM KARA
CHAKKUPALLAM VILLAGE.

BY ADVS.SRI.C.M.TOMY
SRI.MATHEW SKARIA

RESPONDENT/RESPONDENT/COMPLAINANT::

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY PUBLIC PROSECUTOR SRI.V.H. JASMINE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
06-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. RAMAKRISHNAN, J.

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Crl.R.P.No.1439 of 2004
.....

Dated this the 6th day of March, 2015

ORDER

The first accused in S.C.No.63/2000 on the file of the Assistant Sessions Court, Kattappana, is the revision petitioner herein. The revision petitioner along with his wife were charge-sheeted by the Sub Inspector of Police, Kumily police station in Crime No.191/1997 of that police station under Section 55(a) of the Abkari Act.

2. The case of the prosecution in nutshell was that, on 07.11.1997 at about 3.00 p.m., the revision petitioner and his wife were found to be in possession of five litres of arrack in the house with No.VII/344 of Chakkupallam Panchayath in Menonmed in violation of the provisions of the Abkari Act and thereby they have committed the offence punishable under Section 55(a) of the Abkari Act.

3. After investigation, final report was filed and it was taken on file as C.P.No.28/1998 on the file of the Judicial First Class Magistrate Court, Peermade, and it was committed to the Sessions Court, Thodupuzha, where it was taken on file as S.C.63/2000 and it was made over to the Assistant Sessions

Court, Kattappana for disposal. When the accused including the revision petitioner appeared before the court below after hearing both sides, charge under Section 55(a) of Abkari Act was framed and the same was read over and explained to them and they pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 7 were examined and Exts.P1 to P8 were marked on their side. After closure of the prosecution evidence, the revision petitioner and his wife were questioned under Section 313 of the Code of Criminal Procedure and they denied all the incriminating circumstances brought against them in the prosecution evidence. They have further stated that they have not committed any offence and on the same day, one Babu was arrested by the excise officials and they wanted the second accused to be a witness and she refused for the same and on account of that enmity, they have been falsely implicated in the case. In order to prove their case, Dws 1 and 2 were examined and Exts.D1 to D5 were marked on their side. After considering the evidence on record, the trial court found both the revision petitioner and the second accused guilty under section 55(a) of the Abkari Act and convicted them thereunder and sentenced the revision petitioner/first accused to undergo rigorous

imprisonment for four years and also to pay a fine of Rs. One lakh, in default to undergo rigorous imprisonment for three months and the second accused was sentenced to undergo rigorous imprisonment for three years and also to pay a fine of Rs. One lakh, in default, to undergo further rigorous imprisonment for three months. Aggrieved by the same, the revision petitioner along with the second accused, his wife, filed Crl.A.No.52/2002 before the Sessions Court, Thodupuzha, which was made over to the Additional Sessions Court, Thodupuzha for disposal and the learned Additional Sessions Judge by the impugned judgment allowed the appeal in part acquitting the second accused and confirmed the order of conviction and sentence of fine passed by the court below against the revision petitioner but modified the sentence by reducing the substantive sentence to simple imprisonment for one year and default sentence of simple imprisonment for three months. Aggrieved by the same, the present revision has been filed by the revision petitioner/first accused before the court below.

4. During the pendency of the revision, the revision petitioner died and that was confirmed by the counsel for the

petitioner and the Public Prosecutor. Since it is a revision, death of the revision petitioner will not abate the proceedings. So the case is heard on merits.

5. The counsel for the revision petitioner submitted that there is no proper identification of the revision petitioner as the person who ran away from the place. Further it will be seen from the evidence that, apart from the petitioner and his wife, others were also there in the house. Further, on the same date, another abkari crime was registered from the nearby house of the revision petitioner and that probablise the case of the revision petitioner that since the second accused did not agree to be a witness for the same, they have been falsely implicated in the case. So he prayed for allowing the revision.

6. The learned Public Prosecutor supported the concurrent findings of the court below.

7. The case of the prosecution as emerged from the prosecution witnesses was as follows:

On 7.11.1997 at about 3 p.m, while PW1, the Circle Inspector of Police, Kumili and his subordinates, who were examined as Pws 4 and 5, were conducting patrol duty, they got information that arrack was being sold by one Kunhikutty

from the House No.VII/344 of Chakkupallam panchayat in Memonmedu and immediately he sent Ext.P1 search memo and went to the house and conducted search. At that time, according to him, the first accused ran away from the place and the search was conducted in the presence of the second accused and Pws 2 and 4 and they found MO1 cannabis beneath a cot. On examination, it was revealed that, it was arrack and sample was taken and the same was seized after sealing as per Ext.P2 mahazer. Investigation in the case was conducted by PW7. He went to the place of occurrence and prepared Ext.P6 scene mahazer. Ext.P7 requisition was sent along with the forwarding note to send sample for analysis and Ext.P8 chemical analysis report obtained. He questioned the witnesses. He obtained Ext.P5 ownership certificate of the house from PW2, the Secretary of the panchayat. He completed the investigation and submitted final report.

8. Dws 1 and 2 were examined and Exts. D1 to D5 were marked. It was admitted by the prosecution witnesses that, on the same day one Babu was arrested with arrack as per Ext.D1 Mahazer and on the basis of Exts.D2, suomoto report Ext. D3 crime was registered as Crime No.192/1997 of

Kumili police station and that place was situated about 60 meters from the house of the revision petitioner. But the court below had come to the conclusion that they are independent incidents and that cannot be taken as a ground for doubting the prosecution case as projected by the revision petitioner.

8. As regards the present case is concerned, even according to Pws 1, 3 and 4, the first accused on seeing the police party ran away from the place. All of them have admitted that they have no prior acquaintance with the first accused. There is no case for the prosecution that he was later arrested and identified by any of the witnesses as the person who ran away from the place. In fact, PW1 categorically stated that he cannot say as to whether the person ran away from the place was the first accused or not. He was the person who detected the crime as well. So, under the circumstances, though certain contraband articles were seized from the house which was seen to be in the possession of the revision petitioner as per Ext.P5 is not a ground to come to the conclusion that it was he who had placed the same especially when it was admitted by Pws 1, 4 and 5 that there were some persons engaged in mason work at the time when they conducted the

search. So, under the circumstances, it cannot be said that the prosecution has proved beyond reasonable doubt that the first accused was the person who ran away from the place so as to come to the conclusion that he was in conscious possession of the arrack said to have been seized from the house so as to convict him for the offence under section 55(a) of the Abkari Act and this aspect has not been considered by the courts below. Unless it is proved by the prosecution that it was the first accused who ran away from the place, it cannot be said that the prosecution has proved the case against the first accused, who is the revision petitioner herein, beyond reasonable doubt and non consideration of this by the court below and conviction of the revision petitioner for the offence under section 55(a) of the Abkari Act suffers illegality and that benefit must be given to the revision petitioner. So the finding of the courts below that the revision petitioner had committed the offence punishable under section 55(a) of the Abkari Act in view of the discussions made above is liable to be set aside giving him the benefit of doubt and he is entitled to get acquittal of the charge levelled against him.

In the result, the revision is allowed and order of

conviction and sentence passed by the court below against the revision petitioner and modified by the appellate court in SC.No.63/2000 of Assistant Sessions Court, Kattppana and Crl.A.No.52/2002 of Additional Sessions Court, Thodupuzha are set aside and the revision petitioner is acquitted of the charge levelled against him giving him the benefit of doubt. The amount, if any remitted is directed to be returned to the legal heirs of the revision petitioner on production of proof of that fact.

Office is directed to communicate a copy of this order to the concerned court immediately.

Sd/-

K. RAMAKRISHNAN, JUDGE

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/true copy/

P.S to Judge

K. RAMAKRISHNAN, J.

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Crl.R.P.No.1439 of 2004
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Dated this the 25th day of February, 2015.

O R D E R

The counsel for the revision petitioner produced the registered notice sent to the revision petitioner for perusal of this Court, which shows that it was returned with the endorsement addressee passed away, sent to sender and the counsel for the revision petitioner also wants time for impleading the wife of the revision petitioner to prosecute the case. The fact that the revision will not abate on the death of the revision petitioner as the legality of the order has to be

considered by the court on merit. But, if the wife wants to come on record, an opportunity has to be given. But considering the fact that the case is of the year 2004, granting too much of time for that purpose will also delay the disposal of the case. If the petitioner's wife wants to come on record, she is at liberty to file an application on or before 3.3.2015. If no person comes on record on that day, the revision will be heard and disposed of on merit.

K. RAMAKRISHNAN, JUDGE.

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