

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

Crl.Rev.Pet.No. 3439 of 2003 (A)

CRA 261/2001 of SESSIONS COURT,KOZHIKODE
SC 280/2000 of II ADDL. ASST. SESSIONS COURT,KOZHIKODE

REVISION PETITIONER/APPELLANT/ACCUSED

DEVANANDAN, S/O DAMODARAN,
THEKEKUNI HOUSE,
THALAKULATHUR VILLAGE, KOZHIKODE TALUK

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT/COMPLAINANT

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

PUBLIC PROSECUTOR SRI. RAJESH VIJAYAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 06-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

RAJA VIJAYARAGHAVAN.V. J

Crl.R.P.3439 of 2003

Dated 6th August, 2015

ORDER

1. The above captioned Revision Petition under S. 401 of the Code of Criminal Procedure is preferred by the petitioner against the concurrent findings of guilt rendered as against him for the offence punishable u/s 55(a) of the Abkari Act (for short "the Act").

2. As per Judgement dated 11.4.2001, the petitioner was sentenced by the II Additional Assistant Sessions Judge, Kozhikode, to undergo simple imprisonment for one year and to pay a fine of Rs.1,00,000/- and in default, to undergo simple imprisonment for two months.

3. The skeletal facts which led to the prosecution is that on 27.6.1999 at about 6.00 pm, while the Assistant Sub

Inspector of Police, Elathur, was on law and order patrol duty in and around the place called Andikode, the petitioner was found, near Annassery Coir Service Co-operative Society building, holding a can of 10 litres capacity which contained about 8 litres of illicit arrack . He was duly apprehended and prosecution initiated as per law. It is alleged that he had committed offence punishable u/s 55(a) of the Act.

4. On appearance, when the charge was read out , the petitioner pleaded not guilty of the offence and claimed that he be tried. The prosecution, in their endeavour to prove the offense , examined PW's 1 to 6 through whom Exts.P1 to P11 were marked and MO1 and 2 were identified.

5. After the close of the prosecution evidence, the incriminating materials were put to the accused under Section 313 of the Cr.P.C. The accused maintained his

innocence but did not adduce any evidence. The learned Additional Assistant Sessions Judge relied on the evidence of PW1 to 6 and convicted and sentenced the petitioner as indicated above. The above conviction and sentence was assailed by preferring an appeal before the Court of Sessions, Kozhikode. The learned Sessions Judge, on reappraisal of the evidence, rejected all the contentions raised and as per judgment dated 4.9.2003, and confirmed the findings of the learned Trial Judge. The above findings are under challenge in this Criminal Revision Petition.

6. I have heard Sri.P.V.Kunhikrishnan, the learned counsel appearing for the petitioner and Sri.Rajesh Vijayan, the learned Public Prosecutor.

7. Sri P.V. Kunhikrishnan, the learned counsel for the petitioner, submitted that the finding of conviction is liable to

be set aside as the detection and seizure by PW1, the Assistant Sub Inspector of Police is against the statutory mandate. The learned counsel, on the strength of settled precedents of this Court and basing on SRO No.321 of 1996 issued by the Government, contended that only police officers of and above the rank of Sub Inspector of Police in charge of law and order and working in the general executive branch of the police department apart from the revenue officers mentioned in notification are competent to conduct detection and investigation of abkari offences. The learned counsel relied on **Subash v. State of Kerala (2008 (2) KHC 703)**, **Rajan v. State of Kerala (2009 (2) KLD 365)**, **Unni v. State of Kerala (2009 (2) KHC 661)** and **Sabu v. State of Kerala (2007 (3) KHC 753)** to substantiate the above contention.

8. I have anxiously considered the contentions of the

learned counsel for the petitioner.

9. S 50 of the Abkari Act reads as follows :

[50]- Report of Abkari Officer gives jurisdiction to a competent Magistrate:-

(1). Every investigation into the offence under this Act shall be completed without necessary delay.

(2). As soon as investigation into the offences under this Act is completed, the Abkari Officer shall forward a Magistrate, empowered to take cognizance of the offence on a police report, a report in accordance with sub section (2) of section 173 of Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

10. By virtue of the Government notification in SRO 321/1996, the Government of Kerala, in exercise of powers conferred u/s 4 of the Act, has appointed all police officers of and above the rank of Sub Inspector of police in charge of

law and order and working in the general executive of the police Department and all revenue officers off and above the rank of Deputy Collector to the Abkari Officers in their respective jurisdiction for the purpose of Ss.31 to 35, 38, 40 to 53 and 59 of the Act and to exercise all the powers and to discharge all the duties conferred and imposed on abkari offences in the sections aforesaid. This notification had come into effect on 29.3.1996.

11. Ext.P1 seizure mahazer and other contemporaneous records will reveal that the detection and seizure has in fact been affected by PW 1 Assistant Sub Inspector of Police . Investigation was later conducted by PW 6 , who is also the Assistant Sub Inspector of Police , Elathur.

12. In **Sabu v. State of Kerala (2007 (4) KLT 169)**, a learned Judge of this Court has held that Assistant Sub

Inspector of Police is not an authorised officer to detect and investigate an offence under the Act. This Court also held that even if he was empowered as per the provisions of S.2 (o) of Cr.P.C, he cannot exercise the power conferred on an Abkari Officer.

13. A Division Bench of this Court **Subash v. State of Kerala 2008 (2) KLT 1047** held that a Magistrate cannot take cognizance of an offence under the Act on the basis of a report filed by Assistant Sub Inspector of police who is not an Abkari Officer as defined under the Act. It was further held that a plain reading of S.50 of the Abkari Act would reveal that the Magistrate has no jurisdiction to take cognizance of the cases as the report was filed by a person other than an Abkari Officer.

14. In **State of Kerala v. V.P.Enaden (1971 KLT 19)**, a

Full Bench of this Court, in a matter involving prosecution u/s 28(1) of the Prevention of Food Adulteration Act, has held that a Magistrate has no jurisdiction to take cognizance of an offence upon a complaint filed by a person not authorised to institute prosecution.

15. In view of the above settled provision of law, I am of the considered view that the contentions raised in the revision is liable to be upheld and I do so. In the light of the above statutory embargo, I do not think it is necessary to advert to the other contentions raised in the revision Petition. It is beyond cavil that the Assistant Sub inspector of police not being an Abkari officer authorised under the Abkari Act, is incompetent to investigate or lay charge in relation to the abkari offence and the adventure undertaken by the Assistant Sub Inspector of police in the present case, is without any jurisdiction and the same cannot be the basis

of a legal prosecution.

16. The Revision Petition is allowed and the accused is found not guilty of the offence alleged. He is acquitted of all charges and set at liberty.

Sd/-

RAJA VIJAYARAGHAVAN.V.
Judge

MrCS

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P.S.ToJudge