

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

Crl.Rev.Pet.No. 1211 of 2006 ()

**AGAINST THE JUDGMENT IN CRA 249/2001 of 1st ADDL. SESSIONS COURT,
KOLLAM DATED 27-01-2006**

**AGAINST THE JUDGMENT IN CC 193/1998 of J.M.F.C.-II, KOLLAM
DATED 23-10-2001**

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

**SRASWATHY, D/O. MADHAVI,
VAYALIL PUTHEN VEEDU, AKKOLIL CHERRY,
MAYYANAD VILLAGE,
KOLLAM DISTRICT.**

**BY ADVS.SRI.B.MOHANLAL
SMT.MEREENA JOSEPH JOSEPH
SMT.M.M.POORNIMA**

RESPONDENT(S)/RESPONDENT/COMPLAINANT & STATE::

**STATE OF KERALA,
REPRESENTED BY THE EXCISE RANGE INSPECTOR,
CHATHANOOR EXCISE RANGE, KOLLAM DISTRICT,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.GITHESH R.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09-
06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl. R.P. No.1211 of 2006

Dated this the 9th day of June, 2015

ORDER

This Criminal Revision Petition arises out of the judgment in Crl.A.249/01 of the 1st Additional Sessions Judge, Kollam for offence under Section 55(a) of the Abkari Act, whereby the appellate court has upheld the conviction and modified the sentence. The revision petitioner was accused in C.C.No.193/98 of the Judicial First Class Magistrate Court-II, Kollam for offence under Section 55(a) of the Abkari Act and he was convicted and sentenced to simple imprisonment for six months and to pay a fine of ₹25,000/-, in default of payment of fine, to undergo simple imprisonment for six months.

2. The facts of the case are that on 23.04.97 at 12.40 p.m., PW4 was conducting patrol duty within his jurisdiction, when he reached at Kottiyam-Mayyanad Road, the revision petitioner was coming through the road with a plastic sack. Upon suspicion, PW4 inspected the sack, at that time she tried to ran away. PW4 intercepted her and opened the plastic sack in which he detected 100

polythene covers of illicit arrack. She was arrested and contraband articles were seized. Reaching at the Excise Range Office, PW4 registered Crime No.25/97 and after completing investigation, he laid charge before Judicial First Class Magistrate-II, Kollam. The trial court after sifting and weighing the evidence on record convicted the revision petitioner.

3. The learned counsel appearing for the revision petitioner contended that there was inordinate delay in forwarding the seized articles to court. The seized articles were not properly sealed at the time of seizure, which was found at the time of examination of the witnesses. The plastic sack was not properly sealed, which was found open during examination. Moreover, 17 plastic packets were found empty and there was no explanation regarding that aspect.

4. In this context, I have considered the concurrent findings of the courts below. The evidence of PW4 shows that on 23.04.97, he was conducting patrol duty within his jurisdiction at 12.40 pm, he reached at the place of

occurrence, the revision petitioner was proceeding through the road with a sack, upon suspicion, he intercepted her, inspected the plastic sack after smelling and tasting the content in the plastic bag, he identified it as illicit arrack. Thereafter, he arrested the revision petitioner and prepared the mahazar. He also took sample from one packet. The remaining 99 packets were sealed in a plastic sack in the presence of independent witnesses after preparing Ext.P1 mahazar. Ext.P2 is the bail bond. Ext.P4 is the thondy list. The sample taken from the place of occurrence was forwarded to the chemical examiner's lab and obtained Ext.P5 examination report in which 27.15% of ethyl alcohol was detected. PW1 supported the evidence of PW4. These two witnesses were cross examined by the defence counsel, nothing has been brought out to discredit the seizure evidence.

5. The learned Public Prosecutor submitted that the seized articles were sealed at the place of occurrence itself and the remaining arrack packets were sealed in a

plastic sack, which was attested by the witness. There was no reason to disbelieve the seizure of the articles and arrest of the revision petitioner and no reason to interfere in the findings of the courts below.

6. According to the Abkari Act, it is the imperative duty of the seized officer to keep safe custody of the articles seized and shall affix his seal to such article and take sample from them. When any sample is taken, it shall also be sealed with the seal of the officer. In the trial court, prosecution examined PW1 to PW4 and marked P1 to P5 to prove the allegation. Material objects, MO1 to MO3 were marked by the trial court. The incriminating circumstances brought out in evidence were denied by the revision petitioner while questioning her. The procedure of arrest and seizure mentioned under the Abkari Act has been properly completed when revision petitioner was arrested by the Abkari Inspector and he produced her before court with the articles seized without unnecessary delay. The only dispute was with regard to the delay in forwarding the sample to the Magistrate. It reached at

the office of Magistrate after 5 days. When statute empowers the ample power to keep the seized articles in the custody of the Abkari Officer or the Excise Inspector, such delay will not, in any way, help the revision petitioner to discredit the evidence of PW4, since, PW4 is the Excise Inspector. If such officer is producing the seized article within 4 or 5 days, I find no illegality in the official act done by PW4. Even though, the seized articles were produced before court, the seal was tampered and 17 packets were destroyed when it was kept in the custody of the court. Therefore, there is some relevancy with regard to the damage of the seal as highlighted by the learned counsel. There was no label to that plastic sack. That itself is not sufficient to take a contention that the article forwarded to chemical examiner's lab was not seized from the custody of the revision petitioner.

7. Therefore considering the concurrent findings made by the courts below and the relevant points highlighted by the learned counsel appearing for the revision petitioner, I am of the opinion that the conviction

passed by the trial court is only to be confirmed. The fact that the offence was detected by the Excise Inspector 18 years back is not disputed. Now the revision petitioner is aged more than 60 years. Considering the submissions made by the counsel and the nature of offence, I take a lenient view in imposing sentence. The conviction passed by the trial court under Section 55(a) of the Abkari Act is confirmed and the sentence is modified as follows;

- a)The revision petitioner is sentenced to undergo imprisonment for 15 days under Section 55(a) of the Abkari Act.
- b)She is also sentenced to pay a fine of ₹10,000/- (Rupees Ten thousand only), in default of payment of fine, imprisonment for one month.
- c)The period of detention if any undergone by her during the investigation, inquiry or trial shall be set-off against the term of imprisonment.

This revision petition is partly allowed.

STK

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P.A. TO JUDGE

**P.D. RAJAN,
JUDGE**

