

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

Cr1.Rev.Pet.No. 2140 of 2004 (B)

AGAINST THE JUDGMENT IN CRA 29/2001 of SESSIONS COURT (III ADDL.
SESSIONS JUDGE), KOZHIKODE DATED 17-04-2004

AGAINST THE JUDGMENT IN CC 714/1996 of J.M.F.C.-IV, KOZHIKODE
DATED 05-01-2001

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

MURALEEDASAN, S/O.BHASKARAN,
KATTUVAYAL COLONY, KACHERY AMSOM, KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

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

R, BY ADV. SMT. SEENA RAMAKRISHNAN, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 04-06-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.2140 of 2004

Dated this the 4th day of June, 2015

ORDER

This Criminal Revision Petition is preferred against the judgment in Crl.Appeal No.29/2001 of the Sessions Court, Kozhikode for offence punishable u/s.58 of the Abkari Act. The revision petitioner was accused in C.C.No.714/1996 of the Judicial First Class Magistrate Court-IV, Kozhikode, and he was convicted u/s.58 of the Abkari Act and sentenced to undergo imprisonment for one year and to pay a fine of ₹ 15,000/- , in default of payment of fine, to undergo simple imprisonment for three months. Against that, he preferred Crl.Appeal No.29/2001 before Sessions Court, Kozhikode.

2. The facts necessary for the indictment were that

on 29.8.1995 at 8.30 p.m., the Excise Inspector, Kozhikode and party were conducting patrol duty within their jurisdiction, they reached in front of the house of Dr. Mathew Tharakan at Panikker Road, Kachery amsom, the revision petitioner was found in possession of one litre of illicit arrack. He was arrested and the contraband articles were seized. After completing investigation, the Excise Inspector, Kozhikode filed the case in the Judicial First Class Magistrate Court-IV, Kozhikode.

3. To prove the allegation, the prosecution examined PWs 1 to 3 and marked Exts.P1 to P5 as documentary evidence, the material object produced was admitted as MO1 in the trial Court. The incriminating circumstances brought out in evidence were denied by the revision petitioner, while questioning him u/s.313 Cr.P.C. During the cross examination of PW3, Ext.D1 was marked. After hearing both sides, the trial Court convicted him.

4. The learned counsel appearing for the revision petitioner contended that there was inordinate delay in forwarding the seized arrack to the Forensic Laboratory for chemical examination. Two mahazars were prepared in this case, which is inconsistent with the quantity of arrack in the bottle. The conscious possession of arrack was not proved by the Excise officials and no offence u/s 58 of Abkari Act will attract against the revision petitioner. Learned counsel relied on the decision of a Division Bench of this Court in Josekutty v. State of Kerala [2013 (1) KLT 434].

5. The learned Public Prosecutor contended that conscious possession of the arrack was proved by the Excise Inspector through his statement and mahazar. There is no reason to discard the case on that ground alone. The seized article was sealed at the place of occurrence and produced before Court, which was

forwarded to the Forensic Laboratory and the seal was intact. The production of Ext.D1 will not create any difference in the credibility of the prosecution case. No reasons are stated to interfere in the findings of the court below.

6. For the purpose of satisfying the correctness, legality or propriety of the finding and sentence or order of the courts below, I have considered the records of the courts below as to whether they have committed illegality or irregularity while disposing the above case. For satisfying the correctness and legality of the findings of the courts below, I have perused the oral evidence of PW3, who is the detecting officer in this case. His evidence shows that on 29.8.1995, while he was conducting patrol duty with PW2 and other Excise officials, he reached in front of the house of one Dr. Mathew Tharakan, the revision petitioner was found in front of the house

with a plastic can. On seeing the Excise Party, he tried to hide something, upon suspicion they intercepted him and inspected the bottle in his hand. They detected arrack in MO1 which was taken into custody, after preparing Ext.P1 mahazar. The revision petitioner was arrested from the place of occurrence, reaching at the Excise Office, they registered Ext.P2 crime and occurrence report. The seized article was produced before Court as per Ext.P5 property list. The arrack was forwarded to the chemical examiners' lab through Court. Ext.P3 is the requisition and Ext.P4 is the analysis report, which shows that the seized arrack contained 37.9 percentage of ethyl alcohol. The trial Court opined that there was no illegality in the procedure adopted by PW3. PW2 supported the evidence of PW3. Analysing the oral evidence of PW2 and PW3, it is found that the seized article contained ethyl alcohol.

7. The independent witness present there did not

support the seizure, but he admitted signature in Ext.P1 mahazar. The fact that the independent witness did not support the prosecution case, is not a ground to discard the evidence of PWs 2 and 3. Apex Court in Nathusingh v State of Madhya Pradesh [AIR 1973 SC 2783] held as follows:

"The mere fact that the prosecution witnesses are Police Officers is not enough to discard their evidence, in the absence of hostility to the accused.

8. Another contention put forward by the counsel was that the article was seized on 29.8.1995 and it was produced before Court on 2.9.1995. There is inordinate delay in producing the article before Court. PWs 2 and 3 deposed that they affixed the label in MO1 bottle and the signature of PW3 was affixed therein. The accused also put his signature at the time of seizure in MO1 bottle. Thus, label and the signature were torn and fade due to

lapse of time. Therefore, the contention advanced by the defence counsel is not admissible for acquittal. The property list prepared by the Excise Officials also supported the facts. The possession of illicit liquor is an offence u/s.58 of the Abkari Act. According to Section 58, whoever without lawful authority has in his possession any quantity of liquor or of any intoxicating drug, knowing the same to have been unlawfully imported, transported manufactured, or knowing the duty, tax or rental payable under this Act not to have been paid therefor, shall be punishable. The primary question is whether the possession of arrack was lawful.

9. This Court in Dominic v. State of Kerala [1989(1)

KLT 601] held as follows:

"Fanciful doubts of lingering suspicions have no place in a criminal trial. The Supreme Court has time and time again, indicated, "dangers of exaggerated devotion to rule of benefit of doubt, at the expense of social defence". Sir Carlton Allen said:

".....if our ratio is extended indefinitely then comes a point, when the whole system of justice is broken down and society left in a state of chaos".

While it is better to let a hundred guilty escape than punish an innocent, letting a hundred escape is not the ideal. Petitioners were found in conscious and exclusive possession of articles which by smell was identified as ganja. This identification is corroborated by chemical examination. The contemporaneous occurrence report, lends further assurance. Having regard to the circumstances aforementioned, the conviction is proper. Sentence, surely, is not harsh."

The trial Court and the appellate Court considered the relevant facts and convicted the revision petitioner. There is no reason to interfere in the findings of the courts below by invoking the revisional jurisdiction. Therefore the conviction passed by the trial Court is confirmed.

10. Considering the nature of offence and in view of the decision in Sasikumar v. State of Kerala [2012 (4) KLT 867], the sentence imposed by the court below is modified as follows:

- i) The revision petitioner is sentenced to undergo

imprisonment for 15 days u/s.58 of the Abkari Act and to pay a fine of ₹15,000/-, in default of payment of fine, simple imprisonment for one month.

iv) The period of detention undergone by the revision petitioner shall be set off against the sentence of imprisonment.

Crl.R.P. is partly allowed.

P.D. RAJAN, JUDGE.

acd

