

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

Crl.Rev.Pet.No. 1353 of 2005 ()

REVISION PETITIONER(S)/REVISION PETITIONER/APPELLANT/ACCUSED:

JAMES, GRIHARI,
VAYALITHARA VEEDU, NALIBHAGAM, THEKKUMBHAGOM VILLAGE
KOLLAM DISTRICT.

BY ADVS.SRI.S.M.ALTHAF
SRI.S.M.ALTHAF

RESPONDENT(S)/RESPONDENT & COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI. V.S. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 04-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
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.....

Dated this the 4th day of September, 2015

ORDER

The revision petitioner is the accused in C.C. No. 536 of 1997 on the files of the Court of the Judicial Magistrate of First Class, Sasthamcotta.

2. The revision petitioner was convicted by the trial Court under Section 58 of the Abkari Act. The trial Court awarded a sentence of simple imprisonment for three months under Section 58 of the Abkari Act. Appeal filed against the said conviction and sentence was dismissed by the appellate court as per judgment dated 26-6-2004 in Crl.Appeal No. 69 of 1999. Aggrieved by the said conviction and sentence, this revision petition has been filed.

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3. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

4. The prosecution case is that on 17-09-1993 at about noon time, the revision petitioner was found in possession of 5 liters of illicit arrack on the public road near Malibhagom N.S.S. Karayogam buildings in Thekkumbhagom Village, in contravention of the provisions of the Abkari Act. On seeing the excise party, the revision petitioner ran away from the scene, leaving the can containing the contraband article there. The excise party seized the arrack with the can as per Ext. P1 mahazar. The contraband article along with the contemporaneous records were taken to the Excise Officer and, thereafter, crime was registered.

5. Before the trial Court, PW1 to PW4 were examined and Exts.. P1 to P4 were marked for the prosecution. No evidence was adduced on the side of the revision petitioner.

6. PW1 is an attestor to Ext. P1 mahazar. He identified his signature in Ext. P1 mahazar. However, he did not support the

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prosecution case with regard to any other aspect. PW2 was the Excise Guard who accompanied the excise party on the date of incident. He supported the prosecution case. He stated that when the revision petitioner saw the Excise party, the revision petitioner ran away from the scene, leaving the can containing the contraband there. The attestors to the mahazar had given the name of the revision petitioner. PW3 is also an Excise Guard, who also supported the evidence of PW2 in all material aspects.

7. The courts below evaluated the evidence of PW1 and PW2 and concurrently found that the prosecution could establish that the revision petitioner was found in possession of 5 liters of arrack in contravention of the provisions of the Abkari Act. It is true that the independent witness, namely, PW1, did not support the prosecution case. However, the evidence of PW2 and PW3 is found to be reliable, natural and hence acceptable. PW2 and PW3 have no reason to falsely implicate the revision petitioner in a case like this. The courts below appreciated the documentary as well as oral evidence and entered into a finding that the

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revision petitioner committed the offence under Section 58 of the Abkari Act. When there is concurrent finding on facts, this Court will not be justified in interfering with the same unless the finding is perverse or incorrect. No circumstance has been brought to the notice of this court to indicate that the appreciation of evidence by the courts below was perverse or incorrect. In the said circumstances, the finding of the courts below that the revision petition committed the offence under Section 58 of the Abkari Act, does not call for any interference by this Court.

8. As regards the sentence, the learned counsel for the revision petitioner pleaded for leniency. The offence was on 17-09-1993. During that period, the punishment prescribed for the offence under Section 58 of the Abkari Act was sentence of fine which may extend to Rs. 3000/- or imprisonment which may extend to six months or with both. Considering the facts and circumstances of the case, including the quantity of the contraband seized and the period elapsed since the incident, I am of the view that the sentence awarded by the courts below can be

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modified and reduced to a fine of Rs. 3,000/- to secure the ends of justice and accordingly, I order so.

In the result, this Revision Petition stands allowed in part,

- i) confirming the verdict of guilty and conviction passed by the courts below under Section 58 of the Abkari Act
- ii) the sentence awarded by the courts below stands modified and reduced to a fine of Rs. 3000/-
- iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for one month

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Sd/- B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. to Judge