

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

Cr1.Rev.Pet.No. 2623 of 2004 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 85/1999 of ADDL.SESIONS COURT
(ADHOC-I), KASARAGOD DATED 21-08-2004

AGAINST THE JUDGMENT IN CC 982/1996 of J.M.F.C.-I, HOSDRUG
DATED 08-03-1999

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

CHOYI AMBU, S/O. AMBADI,
EDAMUNDA, POOTHANGANAM DESOM, BELUR VILLAGE.

BY ADVS.SRI.M.THAMBAN
SMT.T.SUDHAMANI

RESPONDENT(S)/STATE;:

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

BY PUBLIC PROSECUTOR SRI.N. SURESH

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

acd

P.D. RAJAN, J.

Crl. R.P.No.2623 of 2004

Dated this the 9th day of September, 2015

ORDER

The revision petitioner, who is the appellant in Crl.Appeal No.85/1999 of Additional Sessions Judge (Adhoc-I), Kasaragod, challenges the judgment of concurrent finding of conviction u/s.58 of the Abkari Act. He was accused in C.C.No.982/1996 of Judicial First Class Magistrate-I, Hosdurg, he was convicted and sentenced to pay a fine of ₹15,000/-, in default of payment of fine, simple imprisonment for three months. Against that, he preferred the above appeal, which was dismissed by the Appellate Court. Being aggrieved by that, he preferred this revision.

2. The facts considered for the indictment were that on 22.7.1996 at 12.15 hours, the revision petitioner was found carrying 2 $\frac{1}{2}$ litres of illicit arack in kannas through the road from Poothanganam to Paraklayi near the house of one Govindan situated in Pullur Village, Hosdurg Taluk. The Excise Inspector, Hosdurg seized the arrack and arrested the accused. Thereafter, he registered the crime and after investigation, laid charge before Judicial First Class Magistrate Court-I, Hosdurg. To prove the offence, prosecution examined PW1 to PW3 and marked Exts.P1 to P3. The kannas was marked as MO1. The incriminating circumstances brought out in evidence were denied by the accused, while questioning him. He did not adduce any defence evidence. The trial Court convicted the accused.

3. The learned counsel appearing for the revision petitioner contended that there is no evidence to prove the seizure of arrack. Moreover, the sample was not properly taken from the seized arrack. When there is no direct evidence with regard to the above compliance, the revision petitioner is entitled to get the benefit of doubt.

4. The learned Public Prosecutor contended that the detection and seizure were proved, therefore, no interference is necessary.

5. The allegation against the revision petitioner was that he was in possession of 2 $\frac{1}{2}$ litres of illicit arrack. To prove that offence, prosecution examined PW3, who is the Excise Inspector, Hosdurg Taluk. His evidence shows that, while he was conducting patrol duty on 22.7.1996 at 12.15 hours, the revision petitioner was found in possession of 2

$\frac{1}{2}$ litres of arrack in MO1. He tasted the liquid seized from MO1 and identified it as arrack. He took 180ml as sample. He seized the arrack after preparing Ext.P1 mahazar. Ext.P2 is the crime and occurrence report. Ext.P3 is the chemical analysis report. He produced the seized article on the next day, (23.7.1996) before Court, which is mentioned in Ext.P2 report. The independent witness did not support the oral evidence of PW1. But, they admitted their signature in Ext.P1. But, no evidence has been adduced by PW1 to show that he was properly sealed the arrack at the place of occurrence and produced before Court.

6. The sample examined in the Laboratory which shows ethyl alcohol of 20.15%. Therefore, it is the responsibility of the prosecution to show that MO1 was

possessed by the revision petitioner and sample was taken from MO1 and the same sample had reached in the chemical examiner's lab in a fool proof manner. From the evidence of PW3, it is clear that on the next day, i.e. 23.7.1996 itself, the seized article and the records were produced before Court. In the Abkari Act, it is insisted that the detecting officer or the investigating officer shall produce the seized article before Court without unnecessary delay. The prosecution has a duty to prove that the sample was taken from the seized arrack itself and it had been reached in the chemical examiner's lab in fool proof condition.

7. This Court in Ravi v. State of Kerala [2011 (3)

KL T 353] held as follows:

"The prosecution, in a case of this nature can succeed only if it is shown that the contraband

liquor which was allegedly seized from the accused ultimately reached the hands of the Chemical Examiner by change of hands in a tamper proof condition. (Vide State of Rajasthan v. Daulath Ram (AIR 1980 SC 1314) and Valsala v. State of Kerala ()). No conviction can be entered against the accused in a prosecution as the present one unless it is proved that the sample which was analysed in the Chemical Examiner's laboratory was the very same sample drawn from the contraband liquor allegedly found in the possession of the accused (See Sathi v. State of Kerala (2007 (1) KLT SN 57 (C.No.82) and Sasidharan v. State of Kerala (2007 (1) KLT 720). There is no satisfactory link evidence to show that it was the same bottles seized from the appellant which eventually found their way into the hands of the Chemical Examiner and that there was no meddling or tampering with the bottles while they were in the custody of PW4. Hence, the result of Ext.P7 Chemical Analysis cannot be applied against the appellant."

A close scrutiny of the evidence in this case shows that Ext.P3 chemical examiner's report is relied on by the trial Court and that Court never scrutinized the illegality of taking sample. Therefore, there is no satisfactory evidence to show that the same sample was taken from the seized article and it was forwarded to the chemical

examiner's lab in a fool proof manner. The courts below failed to appreciate that legal aspect. Therefore, I am of the opinion that revision petitioner is entitled to get the benefit of doubt.

8. In the result, the conviction and sentence passed by the Court below u/s.58 of the Abkari Act is set aside and the revision petitioner is set at liberty.

The revision petition is allowed.

P.D. RAJAN, JUDGE.

acd

