

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

Cr1.Rev.Pet.No. 1388 of 2009 ()

AGAINST THE JUDGMENT IN CRA 448/2002 of ADDL.SESIONS COURT
(ADHOC)-II, THALASSERY DATED 29.09.2008

AGAINST THE JUDGMENT IN CC 99/1997 of J.M.F.C.,PAYYANNUR
DATED 22-07-2002

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

MAPPIDICHERY KARTHYAYANI, AGED 59 YEARS,
W/O.LATE ERAMANGALAM AMBADI, RAMANTHALI AMSOM
KUNNERU DESOM, TALIPARAMBA TALUK, KANNUR DISTRICT.

BY ADVS.SRI.M.SASINDRAN
SRI.K.P.HARISH

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

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

ADV. SMT. SEENA RAMAKRISHNAN, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 22-05-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.1388 of 2009

Dated this the 22nd day of May, 2015

ORDER

This revision petition arises against the judgment in Crl.Appeal No.448/2002 of the Sessions Court, Thalassery for offence u/s.55(b) of the Abkari Act. The revision petitioner was accused in C.C.No.99/1997 of Judicial First Class Magistrate Court, Payyannur, in which she was convicted and sentenced u/s.55(b) of the Abkari Act, by the trial Court.

2. The prosecution allegation was that on 22.8.1996 at about 11.45 p.m., during night, at a place called Parathikkad in Ramanthali amsom Kunnaru desom, in the residence of accused, she was found distilling illicit arrack in the kitchen

by using implements of distillation. On the basis of information, the Excise Party arrested the revision petitioner and registered a case against her.

3. To prove the allegation, the prosecution examined PWs 1 to 3 and admitted Exts.P1 to P5 as documentary evidence. During trial, Mos 1 to 8 were marked as material objects. The revision petitioner was questioned u/s.313 Cr.P.C. The trial Court, after analysing the evidence, convicted the revision petitioner. Against that, she preferred the above appeal, which was dismissed. Aggrieved by that, she approached this Court with this revision petition.

4. The learned counsel for the revision petitioner contended that there was no evidence to prove the possession of the house. The incident had occurred in 19 years back and the revision petitioner is now aged 65

years. Therefore, a leniency may be shown in sentence.

5. The learned Public Prosecutor submitted that the revision petitioner was arrested by the Excise officials while distilling arrack. There is no dispute with regard to such arrest. As the revision petitioner was arrested with contraband articles, while she was distilling arrack, the possession of the house is immaterial.

6. While considering the proof regarding the possession of the house, I have gone through the nature of seizure. From the facts and circumstances of the case, it is clear that the revision petitioner was distilling arrack in the alleged house, as per the information obtained by PW1. It is alleged that one person, while passing near the house of the revision petitioner, has got smell of arrack and he reported the matter to PW1 and on the basis of that information, the Excise party proceeded to the place of

occurrence and seized the contraband articles, vessels and arrested the revision petitioner. Mos 1 to 8 were seized from the place of occurrence, after preparing Ext.P3 mahazar. Before conducting search, he prepared Ext.P1 search memo. Ext.P2 is the search list. On the basis of seizure, they registered Ext.P4 crime and occurrence report. The defence counsel cross examined the witnesses. PW2 supported the evidence of PW1, who is a witness to Ext.P2 search list and Ext.P3 mahazar. PW3 is also an official witness supported the case. Nothing has been brought out to disbelieve the evidence of PWs 1 to 3.

7. The chemical analysis report is very relevant in this case. Ext.P5 shows the quantity of ethyl alcohol detected in the sample. Analysing the entire evidence, it is found that the prosecution has established that the accused was distilling illicit arrack as alleged by the

prosecution. Both courts found that the prosecution case was proved beyond any reasonable doubt and the revision petitioner is guilty u/s.55(b) of the Kerala Abkari Act.

8. The question of sentence is a complex problem. The age of the offender, her prior criminal records, nature of offence, education, employment, the background and the mental condition are relevant factors which have to be taken into consideration by a Court while deciding appropriate sentence. The learned counsel for the revision petitioner submitted that 19 years have been elapsed after the incident, a leniency may be shown in sentence. No criminal antecedents were reported against the revision petitioner. 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) She is sentenced to undergo rigorous imprisonment for two months u/s.55(b) of the Akbari Act;

ii) She is sentenced to pay a fine of ₹25,000/- u/s.55(b) of the Abkari Act in default of payment of fine, simple imprisonment for another two months.

iii) 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

