

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

Cr1.Rev.Pet.No. 3073 of 2004 ()

AGAINST THE ORDER/JUDGMENT IN CRA 488/2003 of III ADDITIONAL SESSIONS
JUDGE (ADHOC, FAST TRACK COURT NO.I THRISSUR DATED 30.7.2004.
AGAINST THE ORDER/JUDGMENT IN CC 824/1998 of J.M.F.C.-I, KODUNGALLUR
DATED 22-07-2003.

REVISION PETITIONER(S)/APPELLANTS IN CRL.A.NO.488/2003/ACCUSED 1 & 2
IN C.C.NO.824/1998.:

1. JOHNY @ TONY, AGED 35 YEARS,
S/O. CHACKO, MADAVAN, MALAYATTUR VILLAGE
ALUVA TALUK.
2. PREM KUMAR, AGED 27 YEARS,
S/O. AVARACHAN, PALISSERY, MALAYATTUR VILLAGE
ALUVA TALUK.

BY ADVS.SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS

RESPONDENT(S)/RESPONDENT IN CRL.A.NO.488/2003/COMPLAINANT IN
C.C.NO.824/1998.:

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

PUBLIC PROSECUTOR ADV. SMT. MADHUBEN.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 31-03-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No. 3073 of 2004

Dated this the 31st day of March, 2015

ORDER

The revision petitioners are accused in C.C.No.824/1998 of Judicial First Class Magistrate Court-I, Kodungallur, which was registered for the offence punishable u/s.55(a) of the Abkari Act. The prosecution allegation was that on 28.5.2007 at 2.30 p.m., the Excise inspector, Kodungallur had seized 9504 bottles of illicit liquor from a Mini-lorry bearing registration No.KLQ A4743 near to the road on the northern side of Jama-ath Mosque at Chalingad, which was carried in that vehicle without any valid documents. They registered O.R.7/97 of Kodungallur Excise Range and after investigation, they laid charge before Judicial First Class Magistrate Court-I, Kodungallur.

2. To prove the allegation, the prosecution examined

PWs 1 to 4 and marked Exts.P1 to P3 as evidence. Mos 1 to 4 were also marked in evidence. The incriminating circumstances brought out in evidence were denied by the petitioners. The trial Court, after analysing the evidence, convicted A1, A2 and acquitted A3. Against that, they preferred Crl.Appeal No.488/2003, wherein the conviction and sentence passed against the revision petitioners were confirmed.

3. The learned counsel appearing for the revision petitioners contended that PW1 has no direct knowledge with regard to the arrest of the 2nd accused. There is no convincing evidence for attracting the alleged offence. The inconsistent versions of PWs 1 and 2 create doubt in the credibility of the prosecution case. Therefore, the sentence passed by the trial Court is illegal and is to be rectified by invoking the revisional jurisdiction.

4. The learned Public Prosecutor resisted the above contention and contended that the direct oral testimony of PWs 1 and 2 is not sufficient to prove the offence. Therefore, no interference is necessary in the findings of the Courts below.

5. For the purpose of satisfying the correctness and legality of the finding recorded by the Courts below, I have perused the oral and documentary evidence in this case. I have also considered the propriety of the finding recorded by the Courts below. The offence was detected by PW1 while he was working as Excise Inspector, Kodungallur. Ext.P1 is the seizure mahazar. Mos 1 to 4 series were seized from the vehicle and sent for chemical examination. Analysing the oral evidence of PW1, it is found that there is no reason to doubt the seizure of the article as alleged in the case.

6. In this context, I have also verified whether there is any evidence with regard to the arrest of the 2nd accused. PW2 in his evidence stated that they chased the vehicle in the department vehicle and stopped the mini lorry at Chalingad, from where the 2nd accused ran away. PW3 laid charge before Court. PW4 attested the mahazar, who is also an independent witness, and supported PWs 1 and 2. The mahazar was prepared by PW1. Analysing the oral testimony of PWs 1 to 4, it is revealed that nothing has been brought out to discard their evidence. Therefore, the concurrent finding with regard to the guilt of the accused is only to be confirmed.

7. The learned counsel for the revision petitioners submitted that the trial Court imposed a sentence of two years and a fine of ₹25,000/-.

8. In this context, I have verified the jurisdiction

of the trial Magistrate for imposing sentence. According to Section 29 of the Cr.P.C., the Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding ₹5,000/- before 23.6.2006. Now it is amended as three years imprisonment and fine not exceeding ₹10,000/-. Here, in this case, the sentence was imposed on 22.7.2003. Therefore, the sentence imposed by the Court below was excess than its conferred jurisdiction. Therefore, interference on that point is necessary.

9. Apex Court, while dealing with offence u/s.138 of Negotiable Instruments Act, in Pankajbhai Nagjibhai Patel v. State of Gujarat and another [AIR 2001 SC 567] held that "thus, the non-obstante limb provided in Section 142 of the N.I.Act is not intended to expand the powers of a Magistrate of first class beyond what is fixed in Chapter III

of the Code. Section 29, which falls within Chapter III of the Code, contains a limit for a Magistrate of first class in the matter of imposing a sentence as noticed above i.e., if the sentence is imprisonment it shall not exceed 3 years and if the sentence is fine (even if it is part of the sentence) it shall not exceed ₹5,000/-."

Therefore, the revision petitioners are sentenced to undergo rigorous imprisonment of six months and to pay a fine of ₹10,000/-, in default of payment of fine, they shall undergo simple imprisonment for three months.

The revision petition is partly allowed.

P.D. RAJAN, JUDGE.

acd

