

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

Crl.Rev.Pet.No. 3279 of 2004 ()

**AGAINST THE JUDGMENT IN CRA NO.299/1999 of ADDITIONAL SESSIONS COURT,
ADHOC-II, THALASSERY**

&

**AGAINST THE JUDGMENT IN CC 818/1997 of JUDICIAL FIRST CLASS MAGISTRATE
COURT,KUTHUPARAMBA**

REVISION PETITIONER/APPELLANT/ACCUSED:

**PARAMBAN PADMINI, W/O. KARAYI SREEDHARAN,
KANDAN KUNNU AMSOM, KAIDERY DESOM.**

**BY ADVS.SRI.R.PARTHASARATHY
SMT.SEEMA**

RESPONDENT/RESPONDENT/COMPLAINANT:

**EXCISE INSPETOR, KUTHUPARAMBA,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA ERNAKULAM.**

R1 BY ADV. PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
30-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

AK

P.D. RAJAN, J.

Crl.R.P.3279 of 2004

Dated this the 30th day of September, 2015

ORDER

The revision petitioner is the appellant in Crl. Appeal 299/1999 on the file of the Sessions Judge, Thalassery challenges the concurrent findings of conviction under Section 55(a) of the Abkari Act (hereinafter referred to as 'Act'). He was accused in CC 818/97 on the file of Judicial First Class Magistrate, Koothuparambu and sentenced to undergo rigorous imprisonment for 6 months and pay a fine of Rs.25,000/-, in default of payment of fine, rigorous imprisonment for 3 months. Against that, he preferred the above appeal, which was dismissed by the appellate court. Being aggrieved by that judgment she approached this court with this revision petition.

2. The facts necessary for the prosecution was that, on 10.01.97 at 4.45 pm the Preventive Officer, Excise Range Office, Koothuparambu was conducting patrol duty within his jurisdiction, when he reached at Koothuparamba-Nedumpoil Public Road, in front of the

house of one Balan, Kaidery Desam, Thalassery Taluk, the revision petitioner was found carrying a kannas having 5 litres capacity. On seeing the Excise party, she became perplexed. Upon suspicion, they intercepted her and inspected the contents in the kannas. They detected 4 litres of illicit arrack in her possession. She was arrested and contraband articles were seized. Reaching at the Excise Range Office, they registered occurrence report. After completing investigation, Excise Inspector, Koothuparamba laid charge before Judicial First Class Magistrate, Koothuparamba.

3. To prove the offence, prosecution examined PW1 to PW4 and marked Exts.P1 to P5. The material objects were marked as MO1 and MO2. The incriminating circumstances brought out in evidence were denied by the accused while questioning her. She did not adduce any defence evidence. The trial court convicted her.

4. The learned counsel appearing for the revision petitioner contended that there is no independent corroboration to the alleged seizure. PW2 and PW3 were

standing at a place, 200 metres away from the place of occurrence. There is no proper sampling. PW1 alone signed in the label, which shows that the samples were taken unilaterally without following the benevolent provisions of law. There is a delay of 3 days in producing the seized articles before court and there is no explanation for that. Therefore, the revision petitioner is entitled to get benefit of doubt, which was not considered by the courts below.

5. The learned Public Prosecutor submitted that the detection was made by the special squad and there is no reason to disbelieve their evidence. PW1 had taken sample and affixed his signature in the forwarding note and no reasons are stated by the revision petitioner to disbelieve his evidence. But he admitted that the delay was not explained by the Excise Officials.

6. The main contention put forward by the revision petitioner was that there was no proper sampling in this case. Samples were taken violating the rules. According to PW1, on 10.01.97, while he was conducting patrol duty

and reaching in front of the house of one Balan on the Koothuparamba-Nedumpoil Public Road, revision petitioner was found carrying a can, in which they detected 4 litres of arrack. They tested the liquid and found it as illicit arrack. PW1 arrested the revision petitioner and took 180 ml of illicit arrack in a bottle and sealed it at the place of occurrence. PW2 and PW3 were present there at the time of seizure. He prepared Ext.P1 seizure mahazar. But at the time of preparation of label and sealing, the signature of the independent witness and the signature of revision petitioner was not obtained. It is pertinent to note that it is the primary responsibility of the detecting officer to obtain the signature of the accused on the label affixed on the sample bottle before sealing in it, in order to ensure fair procedure of the detection. MO1 and MO2 having labels and sealed in it, the signature of the accused has not obtained, but the signature of the independent witnesses were there. But PW2 and PW3 admitted there signature in Ext.P1 seizure mahazar alone. When I go through the oral testimony of PW2 and PW3,

they never admitted their signature in the sample MO1 and MO2. Therefore, it is presumed that detecting officer alone put signature in the sampling. This is an illegality committed on the side of detecting officer. This court in **Rajamma V. State of Kerala (2014(1) KLT 506)** held that,

“mere arrest of the accused with the material objects is not sufficient to establish that the accused has committed the offence punishable under Section 55(a) of the Abkari Act”.

7. It is the duty of the prosecution to prove that the contraband liquor seized from the possession of the accused ultimately reached before court and subsequently the sample taken was reached in the chemical examiner's laboratory in a tamper proof condition. It is the duty of the PW1 to obtain signature in the label and the signature of the accused and witness in the label affixed in MO1 and MO2. In the absence of such affixture of signature or identity of the presence of the witness and accused at the time of seizure, no conviction can be entered against the

accused in a prosecution in the present situation, unless it is proved that the sample which was analyzed in the chemical examiners laboratory was one and the same sample drawn from the contraband liquor seized from the possession of the accused revision petitioner.

8. The investigation was conducted by PW4 who prepared the occurrence report, Ext.P2. Ext.P4 is the requisition for chemical examination, in that sample seal was also affixed in Ext.P4. The sample was examined in the laboratory and received Ext.P5 report. Even though PW4 conducted investigation, the legal infirmity as to the seal and label in MO1 and MO2 create a doubt in the credibility of prosecution case. In **Ravi V. State of Kerala 2011 (3) KLT 353**, it is held that:

“If so, it cannot be assumed that the property was in the safe custody of PW4 until their production before Court after 16 days. There is the possibility that the properties would have been tampered with. 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 charge of hands in a tamper-proof condition.”

9. Analysing the evidence in this case, it is found that there is no satisfactory evidence to connect revision petitioner to the alleged offence. Even though, Ext.P5 report was obtained by prosecution, that itself is not sufficient to convict the revision petitioner. He is entitled to get the benefit of doubt. In the result, conviction and sentence passed by the trial court which was upheld by the appellate court is set aside and revision petitioner is set at liberty.

The revision petition is allowed.

STK

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE