

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 1360 of 2012 ()

Crl.A 481/2001 of ADDL.SESIONS COURT, THALASSERY
CC 572/1997 of J.M.F.C.,MATTANNUR

REVISION PETITIONER/APPELLANT/ACCUSED:

P.ABDULLA,
S/O.MAMOO, AGED 47 YEARS
P/O.CHAVASSERY
KANNUR DISTRICT.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENT(S):

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

BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
08-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1360 of 2012

Dated this the 8th day of December 2015

O R D E R

The accused in C.C. No.572 of 1997 on the files of the Court of the Judicial Magistrate of First Class, Mattannur has filed this revision petition challenging the concurrent finding of conviction and sentence passed by the courts below under Section 55(a) of the Abkari Act.

2. Heard.

3. The prosecution allegation is that on 7.11.1996 at about 4.30 p.m., the revision petitioner was found in possession of ten plastic packets of arrack, each having a capacity of 100 m.l. each, in contravention of the

provisions of the Abkari Act.

4. Before the trial court, PW1 to PW4 were examined and Exts.P1 to P3 were marked for the complainant, besides identifying MO1 to MO3 series. No evidence was adduced on the side of the revision petitioner.

5. PW1 was the Excise Inspector, who detected the offence. According to him, on 7.11.1996 at about 4.30 p.m., the revision petitioner was found in possession of 10 plastic packets of arrack, each packet having a capacity of 100 m.l. each, in contravention of the provisions of the Abkari Act. On getting suspicion, the revision petitioner was intercepted and the content inside the packets was inspected by smelling and tasting the same. Then, PW1

and others were convinced that the content inside the packets was arrack. The accused was arrested from the spot.

6. PW4 is an independent witness, who also supported the evidence of PW1 in all material aspects. PW2 is the Range Officer, who accompanied PW1 on patrol duty. He also stated about the prosecution case in tune with the evidence of PW1. PW3 was an independent witness, who did not support the prosecution case, eventhough he admitted his signature in Ext.P1 Mahazar.

7. The learned counsel for the revision petitioner has argued that there is no material before the court to prove the date on which the samples were produced before the

court hence, and it cannot be said that the sample analysed in the laboratory was the sample seized from the revision petitioner and consequently, the revision petitioner is entitled to be granted benefit of doubt. PW1 stated that PW1 had taken the sample. The forwarding note is available with the records, which would show that the sample was produced before the court only on 3.3.1997. No reason has been stated as to why so much delay was caused in forwarding the sample to the court. Property list was also not marked eventhough the same is found with the records. The property list does not bear the date, on which it was received by the court. There is also no evidence before the court to prove the safe custody of

the sample till the same was produced before the Court. In the absence of any evidence to prove the timely production of the sample before the court and its safe custody, it cannot be said that the sample analysed in the laboratory was the sample drawn from the contraband seized from the revision petitioner. The courts below failed to consider the above aspect while appreciating the evidence. For the said reason, the appreciation of evidence by the courts below can not be correct. In the said circumstances, it has to be held that the prosecution failed to establish that the revision petitioner committed the offence under Section 55(a) of the Abkari Act and consequently, the conviction and sentence passed by the courts below cannot be sustained.

In the result, this revision petition stands allowed, setting aside the conviction and sentence passed under Section 55(a) of the Abkari Act and the revision petitioner is acquitted for the said offence. The bail bond of the revision petitioner stands cancelled and he is set at liberty.

Sd/-

**B.SUDHEENDRA KUMAR,
JUDGE**

dl/9.12..2015

// True Copy //

PA to Judge