

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

Crl.Rev.Pet.No. 2114 of 2009 ()

CRA 59/2006 of ADDL. SESSIONS COURT (ADHOC), THALASSERY
SC 485/2001 of SUB COURT, PAYYANNUR

REVISION PETITIONER/APPELLANT/ACCUSED:

CHAKLIAN CHANDRAN
AGED 30 YEARS, S/O.KRISHNAN
20/1998, ALAPPADAMBA AMSOM
KURUVELI DESOM, TALIPARAMBA TALUK

BY ADVS.SRI.V.V.ASOKAN
SRI.P.P.RAMACHANDRAN

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA
(EXCISE INSPECTOR, PAYYANNUR RANGE)
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA

BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
16-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P.No.2114 of 2009

Dated this the 16th day of November 2015

O R D E R

The revision petitioner is the accused in S.C.No. 485 of 2001 on the files of the Assistant Sessions Court, Payyannur.

2. The trial court convicted the revision petitioner under Section 55(g) of the Abkari Act and sentenced him to rigorous imprisonment for three years and a fine of Rs.1,00,000/-. In the appeal, the conviction was confirmed and the sentence was modified and reduced to rigorous imprisonment for one year and a fine of Rs.1,00,000/- under Section 55(g) of the Abkari Act. Aggrieved by the

said conviction and sentence, this revision petition has been filed.

3. Heard.

4. The prosecution allegation is that on 23.12.1998 at 9.30 a.m., the revision petitioner was found carrying 10 litres of wash in a plastic pot for manufacturing illicit arrack, in contravention of the provisions of the Abkari Act.

5. Before the trial court, PW1 to PW4 were examined and Exts.P1 to P7 were marked for the prosecution, besides identifying MO1 pot. No evidence was adduced on the side of the revision petitioner.

6. PW1 was the Excise Inspector, who detected the offence. He stated that on 23.12.1998 at 9.30 a.m., while he was on patrol duty with Excise party, the revision

petitioner was found carrying a pot containing the contraband. He arrested the revision petitioner from the spot. He stated about sampling and sealing of the contraband. PW2 was the Excise Guard, who also accompanied PW1 in the patrol duty. He also supported the evidence of PW1 in all material aspects. PW3 is an independent person. He did not support the prosecution case in its entirety, even though he admitted to have signed on Ext.P1 arrest memo and Ext.P2 seizure mahazar as a witness.

7. The learned counsel for the revision petitioner relying on the decision in **Santhosh v. State of Kerala** [2007(2) KLT 27] argued that possession simplicitor of articles, which can be used for the purpose of

manufacturing liquor, cannot in the absence of cogent and probative indications be assumed to be possession for manufacturing liquor. The learned counsel has submitted that even though the evidence of PW1 to PW3 would prove the possession of wash by the revision petitioner, there is no material before the court to indicate that the said wash was intended for manufacturing liquor. In **Santhosh** (supra), the contraband seized was jaggery and kareenja patta. The said contraband were found transporting in an autorikshaw by the accused therein. At that time, the police party intercepted the accused. In such a situation, the court held that there was no evidence before the court to prove that the possession of jaggery and kareenja patta by the accused was for the purpose of manufacturing the

liquor.

8. As per Rule 2(g) of the Kerala Abkari (Disposal of Confiscated Articles) Rules 1996 (for short 'the Rules), 'Wash'' means a sacharine solution from which spirit is obtained by distillation and it also includes fresh wash or wort. Under Rule 2(h) of the Rules, "Wort" or "fresh wash" means a mixture of water and sacharine material before fermentation. Thus wash is a super solution, which after fermentation can be converted into spirit or arrack through distillation. The wash is the raw material for the preparation of arrack, which is a portable liquor containing alcohol.

9. Ext.P7 report of the chemical analysis would show that 10.82% by volume of ethyle alcohol was present in the

contraband seized in this case. There is also evidence of PW1 and PW2, who are the Excise officers with considerable experience, that they tested the contents found in the pot in the presence of witnesses by tasting and smelling the same and they were satisfied that it was fermented wash fit for distillation. Jaggery and kareenja patta are not defined in Kerala Abkari (Disposal of Confiscated Articles) Rules or in the Kerala Abkari Act, whereas wash is defined under Rule 2(g) of the Kerala Abkari (Disposal of Confiscated Articles) Rules. The evidence on record would show that the wash was possessed by the revision petitioner for the purpose of manufacturing arrack. In view of the evidence available in this case and also in view of the fact that wash is defined in

the above said Rules, I am of the view that the facts in this case are different from the facts in **Santhosh** (supra) and in the said circumstances, the argument in this regard advanced by the learned counsel for the revision petitioner cannot be accepted.

10. The courts below evaluated the oral and documentary evidence adduced by the prosecution and concurrently found that the revision petitioner was found in possession of 10 litres of wash on 23.12.1998 at about 9.30 a.m. for the purpose of manufacturing arrack, in contravention of the provisions of the Abkari Act. No circumstance has been brought to my notice to indicate that the appreciation of evidence by the courts below was perverse or incorrect. The courts below concurrently

found the revision petitioner guilty under Section 55(g) of the Abkari Act and convicted him thereunder. Having gone through the relevant inputs, I do not find any reason to interfere with the concurrent finding by the courts below that the revision petitioner committed the offence under Section 55(g) of the Abkari Act.

11. As regard the sentence, the learned counsel for the revision petitioner has pleaded for leniency. The revision petitioner was aged only 20 years at the time of commission of the offence. There is no allegation that the revision petitioner was previously convicted for any other offence of similar nature. There is also no allegation that the revision petitioner is involved in any other offence of similar nature. Considering the facts and circumstances of

the case, including the fact that the revision petitioner was a first time offender and also taking into consideration of the age of the revision petitioner, I am of the view that the sentence awarded by the appellate court can be further modified and reduced to simple imprisonment for 45 days and a fine of Rs.1,00,000/- to secure the ends of justice. Accordingly, I order so.

In the result, this revision petition stands allowed in part,

- (i) confirming the verdict of guilty and conviction passed by the courts below under Section 55(g) of the Abkari Act,
- (ii) the sentence awarded by the courts below under Section 55(g) of the Abkari Act stands modified and

reduced to simple imprisonment for 45 days and a fine of Rs.1,00,000/- (Rupees one lakh only)

(iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for two months.

sd/-

**B.SUDHEENDRA KUMAR,
JUDGE**

dl/18.11.2015

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PA to Judge