

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

Crl.Rev.Pet.No. 563 of 2010 ( )

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CRL.A 634/2008 of ADDL. SESSIONS COURT, KOZHIKODE- II  
SC 797/2006 of SUB COURT, KOILANDY

REVISION PETITIONER/APPELLANT/ACCUSED:

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RAJAN, S/O.KESAVAN,  
MULIYAPURATH, THAZHAKUNI, PANTHALAYANI AMSOM,  
KURUVANGAD DESOM  
KOILANDY.

BY ADV. SRI.SUNNY MATHEW

RESPONDENT/COMPLAINANT:

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STATE OF KERALA  
EXCISE INSPECTOR, KOILANDY EXCISE RANGE  
REPRESENTED BY THE PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, ERNAKULAM.

BY BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON  
13-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**B.SUDHEENDRA KUMAR, J.**

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Crl.R.P.No.563 of 2010  
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Dated this the 13<sup>th</sup> day of November 2015

**ORDER**

The revision petitioner is the accused in C.C.No.797 of 2006 on the files of the Court of the Assistant Sessions Judge, Koyilandy.

2. The trial court convicted the revision petitioner under Section 8(1) read with 8(2) of Abkari Act and sentenced him thereunder to simple imprisonment for one year and a fine of Rs.1,00,000/- with a default clause for simple imprisonment for three months. The appeal filed against the said conviction and sentence was dismissed.

Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

3. Heard.

4. The prosecution allegation is that on 18.10.2004 at about 4.30 p.m., the revision petitioner was found in possession of 5 litres of illicit arrack in contravention of the provisions of the Abkari Act.

5. Before the trial court, PW1 to PW8 were examined and Exts.P1 to P7 were marked for the complainant, besides identifying MO1 can. No evidence was adduced on the side of the revision petitioner.

6. PW1 was the Preventive Officer, who detected the offence. He had given evidence in tune with the prosecution case. PW2 and PW3 are independent

witnesses who admitted their signature in Ext.P2 seizure mahazar. PW4 is another Preventive Officer, who was also present along with PW1 at the time of seizure of the contraband.

7. The courts below, relying on the documentary as well as oral evidence adduced by the complainant, concurrently found that the revision petitioner committed the offence under 8(1) read with 8(2) of the Abkari Act. Since there is concurrent finding on facts, this Court will not be justified in interfering with the same unless the finding is perverse or incorrect. 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 found the revision petitioner guilty

under Section 8(1) read with 8(2) 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 of the courts below that the revision petitioner committed the offence under Section 8 (1) read with 8(2) of Abkari Act.

8. There is no material before the court to indicate that the revision petitioner was previously convicted in any other offence of similar nature. Considering the facts and circumstances of the case, including the quantity of contraband seized, I am of the view that the sentence awarded by the courts below can be modified and reduced

to simple imprisonment for 45 days and a fine of Rs.1,00,000/- under Section 8(1) read with 8(2) of the the Abkari Act, 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 8(1) read with 8(2) of the Abkari Act,
- (ii) the sentence awarded by the courts below under Section 8(1) read with 8 (2) 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 three months.

The revision petitioner is entitled to set off under Section 428 of the Code for the period of his detention in connection with this case.

The revision petitioner shall surrender before the trial court on 15.12.2015 to suffer the sentence.

SD/-  
**B.SUDHEENDRA KUMAR,**  
**JUDGE**

*dl/16.11.2015*

*// True Copy //*

*PA to Judge*