

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

Cr1.Rev.Pet.No. 2727 of 2009 ()

JUDGMENT IN CRA 117/2002 OF ADDITIONAL SESSIONS COURT, THALASSERY
DATED 12-06-2009

JUDGMENT IN CC 95/1998 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
THALASSERY DATED 28-02-2002

PETITIONER/APPELLANT/ACCUSED:

THANKACHAN MATTATHIL,
S/O.MATHEW, AGED 49 YEARS, MOORKKADAVU
VELLAD AMSOM DESOM, MANAKKADAVU P.O., ALAKODE VIA.
TALIPARAMBA TALUK, KANNUR DISTRICT.

BY ADVS.SRI.V.A.SATHEESH
SRI.V.T.MADHAVANUNNI

RESPONDENTS/RESPONDENT/COMPLAINANT:

1. EXCISE INSPECTOR,
THALASSERY, KANNUR DISTRICT
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.
2. THE STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 08-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No. 2727 of 2009

Dated this the 8th day of October, 2015.

ORDER

The revision petitioner is the accused in C.C. No.95 of 1998 on the files of the Court of the Judicial Magistrate of First Class, Thalassery.

2. The revision petitioner was convicted by the trial court under Section 55 (a) of the Abkari Act and sentenced him thereunder to simple imprisonment for six months and a fine of ₹25,000/- with a default clause for simple imprisonment for three months. The appeal filed against the said conviction and sentence was confirmed. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard both sides.

4. The prosecution allegation can be briefly stated as follows:

On 15.1.1997 at about 4 p.m., the revision petitioner was found in possession of 24 bottles of Indian Made Foreign

Liquor, each bottles having a capacity of 375 ml each, at Hussanmotta, Kurichiyil Desom while the revision petitioner was travelling in bus bearing registration No.KL-13 B 4446.

5. Before the court below, PW1 to PW4 were examined and Exts.P1 to P6 were marked for the prosecution, besides identifying MO1 series to MO3. DW1 was examined on the side of the revision petitioner.

6. PW1 was the Excise Inspector. On 15.1.1997, at about 4 p.m., while he was inspecting the vehicles, the revision petitioner was found travelling in bus No.KL-13 B 4446. He was carrying a big shopper which contained the contraband articles. The total quantity of the Indian Made Foreign Liquor seized was 9 litres. He stated about the legal formalities including the arrest of the revision petitioner. PW2 was the preventive officer, who also supported the evidence of PW1 with regard to the seizure and the arrest of the revision petitioner. PW3 was the conductor of the bus, who also supported the evidence of PW1 and PW2 in all material

aspects. PW4 was the Excise Inspector of Thalassery range.

7. PW4 stated that he forwarded the contraband to the court. According to him, he sent the contraband to the court on 28.12.1997. However, Ext.P3 seizure list would show that the contraband articles were received in the court only on 14.1.1998. There is no material before the court to prove the safe custody of the contraband and the sample till it was received in the court on 14.1.1998. The samples were forwarded to the Forensic Science Laboratory on the very same day by the court as per the records. However, in the absence of any material to prove the safe custody of the sample from 28.12.1997 to 14.1.1998, it cannot be said that the sample analysed in the laboratory was the sample taken as per Ext.P1 mahazar. It is also not discernible as to why there was inordinate delay in producing the contraband and the sample before the court. The samples were received by the court just a day short of one year of the incident. Since there was inordinate and unexplained delay in producing the sample and

the contraband before the court, the revision petitioner is, no doubt, entitled to be granted benefit of doubt. Consequently, the verdict of guilty, 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 by the courts below 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**

Scl.

True Copy

PA to Judge