

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

Crl.Rev.Pet.No. 4462 of 2006

AGAINST THE JUDGMENT IN CRL.A.NO. 220/2004 of ADDITIONAL
DISTRICT & SESSIONS COURT (ADHOC)-II, KOZHIKODE.

AGAINST THE JUDGMENT IN CC 1/2000 of J.M.F.C.-I,
KOZHIKODE.

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

GOPALANKUTTY, S/O. CHOYI,
POTTAMMAL, KURUVATTOOR AMSOM, KONGOTT DESOM,
KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT(S)/RESPONDENT/COMPLAINANT & STATE:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682 031.

BY ADV. PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 16-07-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No. 4462 of 2006

Dated this the 16th day of July, 2015

ORDER

The revision petitioner is the accused in C.C.No.1/2000 on the files of the Judicial First Class Magistrate's Court-I Kozhikode. He was prosecuted for the offence punishable under Sec.55(a) of the Kerala Abkari Act. After trial, the learned Magistrate found the revision petitioner guilty of the said offence and convicted and sentenced thereunder. Though, he preferred Crl. Appeal No.220 of 2004 before the Additional District & Sessions Court Fast Track (Ad hoc-II), Kozhikode, the learned Sessions Judge also concurred with the verdict of guilt and confirmed the conviction. According to the modified sentence, now he stands sentenced to undergo simple imprisonment

for six months and to pay a fine of Rs.25,000/- and in default, to undergo simple imprisonment for one month under Sec.55(a) of the Abkari Act. The concurrent findings of conviction and sentence are under challenge in this revision petition.

2. The prosecution case, in brief, is that on 31/5/1997 at 7.15 p.m., the accused was found carrying 1 ½ litres of illicit arrack in a white plastic can having a capacity of 5 litre in front of the Government Pump House, Parakkadavu Soil Road, Kuruvattur amsom, Kunnamangalam desom. To prove the prosecution case, P.Ws.1 to 5 were examined and Exts.P1 to P3 were marked. The accused pleaded not guilty and denied the entire incriminating circumstances put to him. According to him, the contraband article was seized from his landed property and not from his hand. But, the court below rejected his defence plea and found guilty for the said offence.

3. The learned counsel for the petitioner

vehemently contended that the court below went wrong by relying on the evidence of the official witnesses only. It is pointed out that the independent witnesses turned hostile and conviction cannot be based on the solitary evidence of the detecting officers. The lower court ought to have found that the prosecution has failed to prove the ingredients constituting the offence under Sec.55(a) of the Abkari Act. The lower court grossly erred by disregarding the defence contention as regards the place from which the contraband article was seized. Similarly, the sampling was not correct.

4. Per contra, the learned Public Prosecutor advanced arguments to justify the concurrent findings of the courts below that the accused is guilty of the offence under Sec.55(a) of the Abkari Act. It is contended that the evidence of P.Ws.2 and 4, the detecting officers, is corroborative and reliable to base conviction and the court below is justified in relying on the solitary evidence of the detecting

officers where it is unblemished and trustworthy.

5. In view of the submissions made at the Bar, the only question to be considered is whether there is any illegality or impropriety in the findings whereby the court below found the accused guilty of the said offence.

6. The scope and extent of the jurisdiction and power of the revisional court is very limited and confined to the examination of legality, propriety and correctness of the findings whereby the court below arrived at the conclusion. The revisional court is not inclined to re-appreciate the entire evidence, unless it is found that the appreciation of evidence is vitiated by perversity.

7. Going by the impugned judgment, it is seen that the court below has relied on the evidence of P.Ws.2 and 4, the Excise Inspector and the Excise Guard, who detected the offence. Both of them deposed in conformity with Ext.P1 seizure mahazar. The trial court and the appellate court specifically

observed that the evidence of P.Ws.2 and 4 corroborated each other and even though they were cross-examined at length, nothing has been brought out to discredit their evidence which is corroborated with Ext.P1 seizure mahazar.

8. There is no delay in registering the case or sending the samples to the court in time. The chemical examination report shows that the sample contained 33.1% volume of ethyl alcohol. The evidence of the official witnesses cannot be discarded on the reason that the independent witness is not supporting the prosecution case. The courts below are justified in relying on the evidence of P.Ws.2 and 4 to base conviction, in view of the decision in *Abdul Rasheed v. State of Kerala* [2008 (3) KLT 150] wherein this Court held that if the testimony of the official witnesses is sound, trustworthy and inspires confidence, the same can be relied on to convict the accused. The accused has no case that the detecting officers are keeping ill-will or malice towards the

accused. There is no reason to disbelieve their evidence. Their evidence shows that the accused was arrested when he was transporting the arrack. If it is so, the courts below are justified in holding that the accused was in possession of arrack and the said possession was in the course of transporting of it. Thus, the evidence clearly shows that the accused had committed the offence punishable under Sec.55(a) of the Abkari Act. There is no illegality or impropriety in the findings whereby the trial court convicted the accused for the said offence.

9. Coming to the sentence, it is pertinent to note that the offence has committed 18 years back and the prosecution has no case that after the commission of the said offence, the petitioner has again committed similar offences. Therefore, I am of the opinion that the said fact also can be taken as a strong mitigating circumstance to reduce the prison term. Similarly, the nature and gravity of the offence also give support to the above view. It is also

submitted that he is the only bread winner of the family and if he is incarcerated for a long period, his entire family would be put to great hardship. Prison term is inevitable to secure the interest of deterrence; but deterrence in a case like this does not necessarily depend upon the length of the term that the offender spends behind the bars.

10. Consequently, the substantive sentence of simple imprisonment for six months will stand reduced to simple imprisonment for one day till rising of the court and to pay a fine of ₹25,000/- (Rupees Twenty five thousand only) within a period of two months from today. In default, he has to undergo simple imprisonment for two months.

This revision petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge