

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

Crl.Rev.Pet.No. 355 of 2015 ()

AGAINST THE JUDGMENT IN CRL.A 512/2011 of I ADDL.SESIONS JUDGE.,
THIRUVANANTHAPURAM DATED 10-12-2013

AGAINST THE JUDGMENT IN CC 1911/2006 of J.M.F.C.-I, ATTINGAL

REVISION PETITIONER(S)/APPELLANT/ACCUSED:-:

CHANDRAN, AGED 71 YEARS
S/O.LATE VASUDEVAN, KALYANIKKAVILA, THEKKATHIL VEEDU
CHERUVALLYMUKKU, KIZHUVILAM VILLAGE
CHIRAYINKEEZH TALUK, THIRUVANANTHAPURAM.

BY ADV. SRI.AYYAPPAN SANKAR

RESPONDENT(S)/RESPONDENT/COMPLAINANT:-:

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

BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 07-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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CRL.R.P. No.355 OF 2015

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Dated this the 7th day of April, 2015

ORDER

This revision petition is filed against judgment dated 10.12.2013 in Crl.A.No.512 of 2011 passed by the Court of Additional Sessions Judge-I, Thiruvananthapuram whereby and whereunder the conviction of the revision petitioner under section 20(b)(ii) A of Narcotic Drugs and Psychotropic Substances Act was confirmed and the sentence imposed therefor was modified. The Court of Judicial First Class Magistrate, Attingal tried the revision petitioner for the aforesaid offence and upon finding him guilty, he was convicted thereunder and sentenced to undergo simple imprisonment for a period of six months and to pay a fine of ₹5000/-. In default of payment of fine, he was ordered to undergo simple imprisonment for a further period of one month. The revision petitioner took up the matter in appeal as

Crl.A.No.512 of 2011. The impugned judgment was passed in the said appeal whereby the conviction entered against the revision petitioner was confirmed and the sentence imposed against him was modified. The appellate court allowed the appeal in part and while confirming the conviction and maintaining the sentence to pay a fine of ₹5000/-, the sentence to undergo simple imprisonment for a period of six months was reduced to a period of three months. The default sentence was also maintained. This revision petition is filed against the said judgment.

2. I have heard the learned counsel for the revision petitioner and also the learned Public Prosecutor. The case of the prosecution was that on 8.10.2005, the Excise Inspector, Chirayinkeezh Range seized 105 gms of ganja from the possession of the revision petitioner from near Munna Medical Store, Cheruvallikukku in Keezhvillam Village. The revision petitioner-accused appeared before the court and the charge was read over and explained to him. He pleaded not guilty

and claimed to be tried. To bring home the charge against the revision petitioner, the prosecution examined PWs 1 to 7 and got marked Exts.P1 to P6. MO1 and MO2 were also identified. After the closure of the prosecution evidence, the revision petitioner was examined under section 313, Cr.P.C and he denied all the incriminating circumstances put to him. However, he did not adduce any defence evidence. On careful evaluation of the evidence on record, the trial court found that 105 gms of ganja were found from the possession of the accused and all the mandatory procedures were complied with by the detecting officer. Upon appreciation of the evidence, it was found that the prosecution has succeeded in establishing that the revision petitioner/accused has committed the offence under section 20(b)(ii)A of NDPS Act. Consequently, he was convicted thereunder and sentenced as aforesaid. The appellate court virtually appreciated the evidence on record. However, the appellate court declined to interfere with the findings and conclusions of the trial court and virtually, it was found that the conclusions arrived at by the trial court are

perfectly in tune with the evidence on record. In such circumstances, the conviction of the revision petitioner was confirmed by the appellate court. At the same time, taking into account the age of the revision petitioner and the delay in the matter of trial, the appellate court thought it fit to modify the sentence and reduced the substantive sentence to a period of three months. It is thus obvious that after appreciating the evidence on record consisting of the oral testimonies of PW1 and the documentary evidence in Exts.P1 to P6, the courts below concurrently found that the prosecution has succeeded in establishing the guilt of the accused. In such circumstances, to make this Court to invoke the revisional jurisdiction to interfere with the conviction concurrently entered against the revision petitioner, the revision petitioner has to make out a case of utter perverse appreciation of evidence by the courts below or that the judgments of the courts below are infected with error in law. No such case has been brought out by the revision petitioner. No illegality in procedures was also alleged and established. In short, on hearing the arguments of the

learned counsel for the revision petitioner and the learned Public Prosecutor, I have no hesitation to hold that no grounds warranting an interference in exercise of revisional jurisdiction was brought out by the revision petitioner. The revision petitioner did not have a contention that the evidence was incorrectly adverted to. When that be so, I do not find any legal infirmity in the appreciation of evidence and also in the conclusions and findings. In such circumstances, I do not find any reason to interfere with the conviction concurrently entered against the revision petitioner by the courts below and accordingly, the conviction of the revision petitioner for the offence under section 20(b)(ii)A of NDPS Act is confirmed.

3. As noticed hereinbefore, for the conviction under section 20(b)(ii)(A) of NDPS Act, the trial court sentenced the revision petitioner to undergo simple imprisonment for a period of six months and to pay a fine of ₹5000/-. Default clause was also incorporated by the trial court. The appellate court maintained the sentence to pay a

fine of ₹5000/- as also the default clause. However, the substantive sentence was reduced from six months to three months. In such circumstances, the question is whether a further interference with the sentence imposed against the revision petitioner is called for? I have heard the learned Public Prosecutor in this regard. Evidently, the incident occurred on 8.10.2005. After a prolonged trial, the revision petitioner was convicted as per judgment dated 05.09.2011. The appeal preferred against the said judgment was allowed in part as per judgment dated 10.12.2013. There cannot be any doubt with respect to the position that while considering the sentence to be awarded to an accused, the period taken for the trial and the age of the accused and the possibility of committing similar offence in future should be taken into account. In this case, it is evident that he had suffered trauma of trial for about six years. At the time of the incident, the revision petitioner was aged 61 years. Now, he has crossed the age of 70 years. Taking into account those circumstances, I am of the view that the chance of the revision petitioner committing similar offence is

very remote. Taking into account the quantity of the contraband article along with the aforementioned aspects, I am of the considered view that the jail sentence imposed against the revision petitioner invites modification and further reduction. In such circumstances, while confirming the conviction of the revision petitioner under section 20(b)(ii)(A) of NDPS Act and maintaining the sentence of payment of fine of ₹5000/-as also the default clause, the substantive sentence of simple imprisonment imposed on the revision petitioner is modified and reduced from three months to one month.

This revision petition is allowed in part.

Sd/-
C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010