

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

Crl.Rev.Pet.No. 363 of 2015 ()

CRA 141/2013 of I ADDL.S.C. KOLLAM
SC 1080/2009 of ASSISTANT SESSIONS COURT, KARUNAGAPPALLY

REVISION PETITIONER/APPELLANT:

ROHINIKUTTY, AGED 67 YEARS
W/O. BALAN, PUTHENKANDATHIL HOUSE, KADATHOOR MURI
THAZHAVA VILLAGE, KARUNAGAPALLY, KOLLAM.

BY ADVS.SRI.SIJU KAMALASANAN
SRI.S.ABHILASH
SMT.NIMA JACOB

RESPONDENT/RESPONDENT:

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

BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 05-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.363 of 2015

Dated this the 5th day of October 2015

O R D E R

The revision petitioner is the accused in S.C. No.1080 of 2009 on the files of the Court of the Assistant Sessions Judge, Karunagappally.

2. The trial court convicted the revision petitioner under Section 8(1) read with Section 8(2) of Abkari Act and sentenced him thereunder to simple imprisonment for two months and a fine of Rs.1,00,000/- with a default clause for simple imprisonment for thirty days. The appeal filed against the said conviction and sentence was dismissed by the appellate court as per judgment in

Crl.Appeal No.141 of 2013. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard.

4. The prosecution allegation is that on 6.4.2006 at about 11 a.m., the revision petitioner was found in possession of 7 litres of arrack in a 10 litres can for sale at a place on the eastern side of Aikkara mukku-Mallassery colony road, in contravention of the provisions of the Abkari Act.

5. Before the court below, PW1 to PW8 were examined and Exts.P1 to P8 were marked on the side of the prosecution. No evidence was adduced from the side of the defence.

6. PW1 is the preventive officer attached to the

Excise Office, Karunagappally, who detected the offence. He stated that while he was on patrol duty along with the Excise officials, they saw the revision petitioner at about 11 a.m., at a place on the eastern side of Aikkara mukku-Mallassery colony road. On seeing the Excise party, the revision petitioner tried to go back. The revision petitioner was carrying a 10 litre can with him. On getting suspicion, PW1 inspected the content inside the can by smelling and tasting the same. Then PW1 was convinced that the content inside the can was illicit arrack. Since there was no lady officer with the Excise party, the revision petitioner was not arrested from the spot. Thereafter, the revision petitioner surrendered before the Excise Officer on 18.9.2006 and she was formally arrested by PW3 on that day at the Excise Office. PW2 was also an Excise Official,

who accompanied PW1 for patrol duty. He also had given evidence corroborating the evidence of PW1 in all material aspects. PW4 and PW6 were independent witnesses examined by the prosecution to prove the occurrence. However, PW4 did not even admit his signature in Ext.P1 mahazar. PW6 admitted his signature in Ext.P1 mahazar, prepared by PW1 in connection with the seizure in this case. However, PW6 did not support the prosecution case in any other aspect. Ext.P3 is the certificate of chemical analysis which would show that the sample analysed in the laboratory contained 34.85 percentage by volume of ethyl alcohol.

7. The courts below relying on the oral and documentary evidence adduced by the prosecution, concurrently found that the revision petitioner committed

the offence under Section 8(1) read with Section 8(2) of the Abkari Act. The defence set up by the revision petitioner was repelled by the courts below. 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 concurrently found the revision petitioner guilty under Section 8(1) read with Section 8(2) of the Abkari Act and convicted him thereunder. In the said circumstances, the concurrent finding of the courts below that the revision petitioner committed the offence under Section Section 8 (1) read with Section 8(2) of the Abkari Act does not warrant any interference by this Court.

8. The courts below had taken a very lenient view in the matter of sentence. In the said circumstances, the sentence awarded by the courts below also does not call for any interference by this court.

In the result, this revision petition stands dismissed.

I make it clear that the revision petitioner is entitled to set off under Section 428 Cr.P.C. for the period of her detention in connection with this case.

Sd// **B.SUDHEENDRA KUMAR, JUDGE.**

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/ True copy /

PA to Judge