

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

Crl.Rev.Pet.No. 127 of 2014 ()

AGAINST THE JUDGMENT IN CRA 29/2012 OF SESSIONS COURT, KOLLAM DATED
16-12-2013

AGAINST THE JUDGMENT IN CC 1953/2009 OF JUDICIAL MAGISTRATE OF FIRST
CLASS-III, PUNALUR DATED 23-1-2012

REVISION PETITIONER/APPELLANT/ACCUSED:

GANAPATHI, AGED 30 YEARS
S/O.DAS, CHARUVILA VEEDU, HALUVA COLONY
MUSSAVARIKUNNU MURI, PATHANAPURAM, PUNALUR.

BY ADVS.SRI.C.RAJENDRAN
SRI.K.R.RANJITH

RESPONDENTS/RESPONDENTS/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 23-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl. R.P. No. 127 of 2014

Dated this the 23rd day of September, 2015.

ORDER

The revision petitioner is the accused in C.C.No.1953 of 2009 on the files of the court of the Judicial Magistrate of First Class-III, Punalur.

2. The revision petitioner was convicted by the trial court under Section 20 (b) (ii) A of Narcotic Drugs Psychotropic Substances Act, 1985 (for short 'the Act') and sentenced thereunder to simple imprisonment for three months and to pay a fine of ₹3,000/- with a default clause for simple imprisonment for one month.

3. Aggrieved by the said conviction and sentence, the revision petitioner filed appeal. As per the judgment in Crl.A.No.29 of 2012, the appellate court dismissed the appeal confirming the conviction and sentence passed by the trial court. Aggrieved by the said conviction and sentence, this

revision petition has been filed.

4. Heard both sides.

5. The prosecution allegation is that on 27.09.2008 at 12.30 p.m., the revision petitioner was found in possession of 75 gram of ganja in a plastic cover for the purpose of sale in contravention of the provisions of the Act.

6. Before the court below, PW1 to PW6 were examined and Exts.P1 to P7 were marked for the prosecution, besides identifying MO 1 and MO2.

7. PW2 was the Excise Inspector, who detected the offence. He stated that on 27.09.2008, while he was on patrol duty along with the Excise party, the revision petitioner was found at a place in Kurisadimukku - Chalakko with a plastic cover in his right hand. On seeing the Excise party, the revision petitioner attempted to run away from there. On getting suspicion, the revision petitioner was intercepted. The content inside the packet was inspected and it was found that it contained 75 gram of ganja. The revision petitioner was

arrested from the spot and the contraband articles were seized as per Ext.P4 mahazer. PW3 and PW4 had also given evidence corroborating the evidence of PW1 in all material aspects. Ext.P6 report of the chemical analysis would show that the contraband seized was ganja. Considering the oral and documentary evidence adduced by the prosecution, the courts below concurrently found that the revision petitioner committed the offence under Section 20 (b) (ii) A of the Act. Since there is concurrent finding on facts by the courts below, 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 finding of the courts below is perverse or incorrect. In the said circumstances, 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 20 (b) (ii) A of the NDPS Act.

8. As regards the sentence, the learned counsel for the

revision petitioner pleaded for leniency. The quantity involved in this case is only 75 grams of ganja. There is no material before the court to show that the petitioner was previously convicted in any other case of similar nature. Considering the facts and circumstances of the case, including the quantity of the contraband seized, I am of the view that the sentence awarded by the courts below can be modified and reduced to imprisonment till the rising of the court and a fine of ₹10,000/- (Rupees ten thousand only) to secure the ends of justice and accordingly I order so.

In the result, the revision petition stands allowed in part,

(i) confirming the verdict of guilty and conviction passed by the courts below under Section 20 b (ii) A of the NDPS Act.

(ii) the sentence awarded by the courts below under Section 20 (b) (ii) A of the Act stands modified and reduced to imprisonment till the rising of the court and a fine of

₹10,000/- (Rupees ten thousand only).

(iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for three months.

The petitioner shall surrender before the court below on 20.10.2015 to suffer the sentence.

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

Scl.

True Copy

PA to Judge