

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1361 of 2015 ()

AGAINST THE JUDGMENT IN CRA 3/2013 of ADDL. SESSIONS COURT - VII,
ERNAKULAM DATED 25-04-2015
AGAINST THE JUDGMENT IN CC 276/2010 of J.M.F.C.-I, KOCHI
DATED 06-12-2012

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

NAZEER, AGED 51 YEARS
S/O.ALIKUNJU, KUZHIKANDATHIL VEEDU, THEKKAN MALIPPURAM
PUTHUVYPPU, ERNAKULAM DISTRICT - 682 508.

BY ADVS.SRI.C.ANILKUMAR (KALLESSERIL)
SRI.C.Y.VINOD KUMAR
SRI.P.M.MANASH

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

STATE OF KERALA
(REP.BY THE CIRCLE INSPECTOR OF POLICE
NJARAKKAL POLICE STATION
CRIME NO.1283/2009 OF NJARAKKAL POLICE STATION)
REPRESENTED 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 26-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Dated this the 26th day of October, 2015

ORDER

The revision petitioner is the accused in C.C. No. 276 of 2010 on the files of the Court of the Judicial Magistrate of First Class-I, Kochi.

2. The trial Court convicted the revision petitioner under Section 20(b)(ii)(A) of the NDPS Act, and sentenced him thereunder to rigorous imprisonment for four months . The appeal filed against the said conviction and sentence was dismissed. Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

3. Heard both sides.

4. The prosecution allegation is that on 25-09-2009 at about 11 a.m., the revision petitioner was found in possession of 45 gm. of dried ganja in contravention of the provisions of the N.D.P.S. Act.

5. Before the trial Court, PW1 and PW2 were examined

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and Exts. P1 to P3 were marked for the prosecution, besides identifying MO1 to MO4. On the side of the defence, Exts. D1 and D2 were marked.

6. PW2 was the Sub Inspector of Police, Njarackal Police Station during the relevant time. On 25-08-2009, at about 11.05 a.m., PW2 and party found the revision petitioner in possession of 45 gm. of dried ganja in contravention of the provisions of the NDPS Act. He intercepted the revision petitioner and seized the article. He also arrested the revision petitioner. PW1 was the Head Constable of Njarakkal Police Station, who accompanied PW2 in the patrol duty. He was also present along with PW2 at the time of detection of the offence. He also supported the evidence of PW2 in all material aspects.

7. The courts below, after evaluating the oral and documentary evidence, concurrently found that the revision petitioner possessed 45 gm. of dried ganja at about 11.05 a.m. on 25-08-2009 at a place called Malippuram, in contravention of the provisions of the NDPS 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

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indicate that the concurrent finding by the courts below is perverse or incorrect. In the said circumstances, I find no 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. There is no material before the court to indicate that there was any previous conviction against the revision petitioner. Considering the facts and circumstances of the case, including the quantity of contraband seized from the revision petitioner, 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 Rs. 10,000/- (Rupees ten thousand only) to secure the ends of justice. Accordingly, I order so.

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

- i) confirming the conviction and sentence passed by the courts below under Section 20 (b) (ii) (A) of the N.D.P.S. Act
- ii) the sentence awarded by the courts below

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stands modified and reduced to imprisonment till the rising of the court and a fine of Rs. 10,000/- (Rupees ten thousand only) .

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

The revision petitioner shall surrender before the trial court on 30-11-2015 to suffer the sentence.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. To Judge

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