

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. 826 of 2014 ()

CRA 270/2013 of ADDL.DISTRICT & SESSIONS COURT,PATHANAMTHITTA
SC 169/2012 of ASSISTANT SESSIONS COURT, THIRUVALLA

REVISION PETITIONER:

VIJESH VIJAYAN @ MANIKUTTAN
MUNDAPLACKAL HOUSE, POIKAYIL MURI, CHENGAROORCHIRA
KUNNAMTHANAM VILLAGE.

BY ADVS.SRI.P.HARIDAS
SMT.S.SIKKY

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.
2. EXCISE INSPECTOR,
MALLAPALLY - 689 645.

BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

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

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.826 of 2014

Dated this the 23rd day of September 2015

ORDER

The revision petitioner is the accused in S.C. No.169 of 2012 on the files of the Court of the Assistant Sessions Judge, Thiruvalla.

2. The revision petitioner was convicted by the trial court under Section 8(1) read with Section 8(2) of Abkari Act and sentenced thereunder to rigorous imprisonment for three years and a fine of Rs.1,00,000/- with a default clause for simple imprisonment for six months. The

appeal filed against the said conviction and sentence was dismissed by the appellate court as per judgment in CrI. Appeal No.270 of 2013. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

4. The prosecution case is that on 23.4.2008 at about 6.20 p.m., the revision petitioner was found in possession of 1½ litres of arrack in a plastic bottle, in contravention of the provisions of the Abkari Act.

5. Before the trial court, PW1 to PW4 were examined and Exts.P1 to P8 were marked for the prosecution, besides identifying MO1. DW1 was examined for the defence.

6. PW1 and PW2 were the independent witnesses examined by the prosecution to prove the prosecution case. However, they did not support the prosecution case, eventhough they admitted the signature in Ext.P1 seizure mahazar. PW3 was the Circle Inspector, who detected the offence. According to him, on 23.4.2008 at about 6.20 p.m., the revision petitioner was found in possession of a plastic bottle at a place in Kunnamthanam. On suspicion, the revision petitioner was intercepted. The content inside the bottle was tested by smelling and tasting the same. Then, PW1 was convinced that the content inside the bottle was arrack. The revision petitioner was arrested from the spot and the contraband article was seized as per Ext.P1 seizure mahazar.

7. PW4 was the Excise Range Inspector, who was also present along with PW3 at the time of detection of the offence. He also supported the evidence of PW3 in all material aspects.

8. The learned counsel for the revision petitioner has argued that since there is no material before the Court to prove the date on which the sample was forwarded to the laboratory for chemical analysis, it cannot be said that the sample sent for analysis was the sample seized as per the evidence of PW3 and PW4 and in the said circumstances, the revision petitioner is entitled to be granted the benefit of doubt. PW4 stated that he prepared the forwarding note at the Excise office. However, PW4 did not state when the said forwarding note and the sample were forwarded for

chemical analysis. Ext.P6 is the copy of the forwarding note, which would show that the said note does not bear the date on which the same was received in the court. Ext.P6 was dated 23.4.2008. The other records, namely, Ext.P5 property list, Ext.P1 mahazar and Ext.P4 occurrence report reached the court on 24.4.2008 as per the dated endorsement of the Court. However, the date of receipt of Ext.P6 by the court of is not shown in Ext.P6. Therefore, there is no evidence as to when Ext.P6 was received by the Court. PW4 did not state that he forwarded Ext.P6 to the Court. There is no evidence as to who sent Ext.P6 to the Court. Ext.P8 Chemical analysis report would show that the sample was received in laboratory on 27.6.2008. There is no explanation as to why there was delay in

receiving the sample in the laboratory. In the absence of evidence regarding the forwarding of the sample to the laboratory, it cannot be said that the sample analysed in the laboratory was the sample seized from the revision petitioner.

9. The revision petitioner has a contention that he was a member of SNDP Yogam, who had led a procession against the Excise Officers for having affixed a poster regarding liquor in the SNDP office. PW3 admitted that there was a procession. It is the contention of the revision petitioner that because of the said enmity, PW3 and PW4 had falsely implicated the revision petitioner as an accused in this case. In this case, even though PW4 was not the detecting officer, he was also present along with PW3 at

the time of detection of the offence. Thereafter, it was PW4, who registered the crime. PW4 also conducted the investigation and filed the final report before the Court. Apart from the evidence of PW3 and PW4, there is no material before the court to connect the petitioner with the commission of the offence. Under these circumstances, the evidence regarding the date of receipt of Ext.P6 Forwarding note by the court and the person who sent Ext.P6 to the Court, become relevant, particularly the contraband allegedly seized was only 1½ litres of arrack. In the absence of evidence regarding the same, I am not inclined to hold that the evidence of PW3 and PW4 is sufficient to bring home the guilt of the revision petitioner.

10. For the above said reasons, the conviction and

sentence passed by the courts below, cannot be sustained and consequently, I set aside the same.

In the result, this revision petition stands allowed setting aside the conviction and sentence passed by the courts below under Section 8(1) read with Section 8(2) of the Abkari Act and the revision petitioner is acquitted for the said offence.

The bail bond of the revision petitioner stands cancelled and he is set at liberty.

Sd//

B.SUDHEENDRA KUMAR, JUDGE.

dl /

True copy /

PA to Judge