

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

Crl.Rev.Pet.No. 927 of 2014 ()

Crl.A 110/2013 OF THE ADDITIONAL SESSIONS COURT - III, KASARAGOD

SC 300/2011 OF THE ASSISTANT SESSIONS COURT, KASARAGOD

REVISION PETITIONER/ (APPELLANT/ACCUSED) :

RADHAKRISHNAN, AGED 60 YEARS
S/O.CHANIYA POOJARI PANTHIVAYAL, HEROOR VILLAGE
KASARAGOD DISTRICT.

BY ADVS.SRI.T.SETHUMADHAVAN (SR.)
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
SMT.VANDANA MENON

RESPONDENT (S) /COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE DIRECTOR OF PUBLIC PROSECUTIONS
HIGH COURT OF KERALA, ERNAKULAM.

R BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 14-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No. 927 of 2014

Dated this the 14th day of December, 2015.

ORDER

The accused in S.C.No.300 of 2011 on the files of the Assistant Sessions Court, Kasaragod, has filed this revision petition challenging the concurrent finding of conviction and sentence passed by the courts below under Section 8 (2) of the Abkari Act.

2. Heard.

3. The prosecution allegation is that on 25.11.2009 at 12.30 p.m., the revision petitioner was found transporting 20 litres of arrack in a Can having a capacity of 35 litres along BC road - Bajappakadavu road in contravention of the provisions of the Abkari Act.

4. Before the trial court, PW1 to PW5 were examined and Exts.P1 to P11 were marked for the prosecution. Ext.D1 was marked on the side of the revision petitioner.

5. PW1 was the Excise Inspector, who detected the offence. PW1 stated that while he was engaged in patrol duty along with the excise party, the revision petitioner was found carrying a 35 litre Can with him. On getting suspicion, the revision petitioner was intercepted. The content inside the Can was tested by smelling and tasting the same. PW1 and others were convinced that the content inside the Can was illicit arrack. PW1 arrested the revision petitioner. He had taken sample from the contraband and sealed the same. PW2 was the Preventive Officer, who also accompanied PW1 for patrol duty. He also supported the evidence of PW1 in all material aspects. PW3 was the independent witness, who did not support the prosecution. However, PW3 admitted that he signed Ext.P1 arrest memo and Ext.P5 mahazar.

6. The learned counsel for the revision petitioner has argued that even though the incident in this case was on 25.11.2009, the final report was filed before the court only on 11.1.2011 and hence there is inordinate delay in filing the final

report before the court and consequently, the revision petitioner is entitled to the benefit of doubt. The learned counsel for the revision petitioner relied on the decision in **Krishnan H. v. State [(2015) 1 KHC 822]** to buttress his argument. In *Krishnan (supra)*, the Court held in paragraph 11 thus:-

“Section 50 of the Abkari Act mandates that investigation into the offence shall be conducted and completed without unnecessary delay. Here, in this case, the long delay in conducting the investigation is writ large. The prosecution has not offered any explanation for this inordinate delay in conducting the investigation. This aspect of the matter also cannot be brushed aside.”

7. In *Krishnan (supra)*, the delay in conducting the investigation was taken as one of the grounds by the court to acquit the accused on the facts and circumstances of that case. Not even a scene mahazar was prepared in that case. Two independent witnesses cited to prove the seizure mahazar, were not examined by the prosecution in that case. On the

facts and circumstances of the case, the court granted benefit of doubt to the accused therein.

8. The facts of this case are different. In this case, the occurrence was on 25.11.2009 and the final report was filed on 11.1.2011, which was within 14 months of occurrence. The revision petitioner has no a case that he had sustained any prejudice due to the delay in filing the final report. The sample seized in this case was produced before the court on 25.11.2009 itself. The forwarding note was also produced before the court on 25.11.2009. The forwarding note contained the specimen of the sample seal. The accused was also produced before the court on the very same day. The independent witness was also examined by the prosecution to prove the occurrence. It is true that the independent witness, namely, PW3, did not support the prosecution case. There is no allegation that PW1 or PW2 had any ill-motive to falsely implicate the revision petitioner in a case like this. Considering the facts and circumstances of the case, I am of the view that

the delay of less than 14 months occurred in this case in filing the final report is not at all fatal to the prosecution case.

9. The courts below correctly appreciated the oral and documentary evidence adduced by the parties and concurrently found that the revision petitioner committed the offence under Section 8 (2) of the Abkari Act. No circumstance is available before the court to indicate that the appreciation of evidence or concurrent finding by the courts below is perverse or incorrect. In the said circumstances, the concurrent finding by the courts below that the revision petitioner committed the offence under Section 8 (2) of the Abkari Act does not warrant any interference by this court.

10. As regards the sentence, the learned counsel for the revision petitioner has pleaded for leniency. There is no material before the court to indicate that the revision petitioner was previously convicted in any other offence of similar nature. The revision petitioner is presently aged 61 years.

Considering the facts and circumstances of the case

including the age of the revision petitioner and also the quantity of contraband seized and also taking into consideration of the fact that the revision petitioner is the first time offender, I am of the view that the sentence awarded by the courts below under Section 8 (2) of the Abkari Act can be modified and reduced to simple imprisonment for three months and a fine of Rs.1,00,000/- (Rupees one lakh only) to meet the ends of justice and accordingly, I order so. In default of payment of fine, the revision petitioner shall undergo simple imprisonment for two months.

In the result, this revision petition stands allowed in part as above.

Sd/-

B. SUDHEENDRA KUMAR
JUDGE

Scl/14.12.2015

True Copy

PA to Judge