

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

Cr1.Rev.Pet.No. 2316 of 2011 ()

Cr1.A 547/2009 OF THE ADDITIONAL SESSIONS COURT, FAST TRACK (ADHOC),
MAVELIKKARA

SC 154/2007 OF THE ASSISTANT SESSIONS COURT, CHENGANNUR

REVISION PETITIONER/APPELLANT/ACCUSED:

PONNAPPAN, S/O.JOSEPH, AGED 49 YEARS,
THUNDATHIL KIZHAKKETHARA, KODUVALLOR MURI
MULAKUZHA VILLAGE, CHENGANNUR TALUK
ALAPPUZHA DISTRICT

BY ADVS.SRI.AJITH MURALI
SRI.K.V.ANIL KUMAR

RESPONDENT/RESPONDENT/COMPLAINANT:

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

R BY PUBLIC PROSECUTOR SRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 26-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.2316 of 2011

Dated this the 26th day of November, 2015

ORDER

The accused in S.C.No.154 of 2007 on the files of the Assistant Sessions Court, Chengannur has filed this revision petition challenging the concurrent finding of conviction and sentence passed by the courts below under Section 8 (1) r/w 8 (2) of the Abkari Act.

2. Heard.

3. The prosecution allegation is that on 20.9.2004 at about 6 p.m., the revision petitioner was found transporting 1 litre of arrack in a plastic container in contravention of the provisions of the Abkari Act.

4. Before the trial court, PW1 to PW4 were examined and Exts.P1 to P8 were marked for the prosecution, besides identifying MO1. No evidence was adduced on the side of the revision petitioner.

5. PW1 and PW2 were independent witnesses examined by the prosecution to prove the incident. However, they did not support the prosecution case, even though they identified their signature in Exts.P2 to P4. PW3 was the Excise Inspector, who detected the crime. PW3 stated that on 20.9.2004 at about 6 p.m., while he was on patrol duty along with the excise party, the revision petitioner was found carrying MO1 Can. The content of the can was tested by smelling and tasting the same and PW3 was convinced that the content inside the can was arrack. The solitary evidence connecting the revision petitioner with the commission of the offence is the evidence of PW3 regarding the recovery of the contraband as per Ext.P4 seizure mahazar. Ext.P8 is the certificate of chemical analysis, which would show that the contraband contained 36.41% of volume of ethyl alcohol.

6. The learned counsel for the revision petitioner relied on an unreported decision of this Court in Crl.A.No.47 of 2006 and argued that since PW3 had taken only one sample from

the contraband, there is violation of the mandatory provisions of Excise Manual and consequently, the revision petitioner is entitled to benefit of doubt.

7. The High Court in Crl.A.No.47 of 2006 observed thus:-

“As per the provisions of the Abkari Act and Excise Manual, the officer concerned is bound to take minimum of two samples. This is a mandatory provision. In the case on hand, only a single sample had been taken and there is also controversy regarding the seal affixed on the sample.”

The Court further held in the above appeal thus:-

“The insistence for taking two samples has a purpose to serve. If the accused feels that the first sample sent for examination was not sufficient or that there is some defect, of course he can seek the court to send the second sample for examination. That is a safeguard given to the accused which cannot be denied at all by taking only one sample. It is clear that PW1 had taken only one sample. It has been held by this

Court that violation of such provision is fatal.”

8. In this case, the evidence of PW3 coupled with Ext.P4 would show that only one sample was taken. Therefore, there is violation of mandatory provisions of Excise Manual, which is fatal to the prosecution. Consequently, the revision petitioner is entitled to benefit of doubt as held in the above decision. Therefore, the conviction and sentence passed by the courts below cannot be sustained.

In the result, this revision petition stands allowed, setting aside the conviction and sentence passed by the courts below under Section 8 (1) r/w 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

Scl/26.11.2015

True Copy

PA to Judge