

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 1162 of 2014 ()

Crl.A 138/2013 of ADDL. SESSIONS COURT - III, KASARAGOD
SC 193/2011 of SUB COURT, KASARAGOD

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

PADMANABHA POOJARI AGED 45 YEARS
S/O.POOVAPPA POOJARI, KUNHIHITHLU, KULLOOR VILLAGE
KASARAGOD TALUK AND DISTRICT.

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

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
11-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P.No.1162 of 2014

Dated this the 11th day of December 2015

O R D E R

The accused in S.T.No.193 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(1) read with Section 8(2) of Abkari Act.

2. Heard.

3. The prosecution allegation is that on 13.3.2009 at 6 p.m., the revision petitioner was found transporting 78 packets of arrack, each packet having a capacity of 100 m.l. each, in a Nylon bag, in contravention of the provisions of the Abkari

Act.

4. Before the trial court, PW1 to PW6 were examined and Exts.P1 to P11 were marked for the complainant. No evidence was adduced on the side of the revision petitioner.

5. PW1 was the Excise Inspector, who detected the offence. According to PW1, on 13.3.2009 at about 6 p.m., while he was on patrol duty along with the Excise party, the revision petitioner was found carrying a Nylon bag. On getting suspicion, the revision petitioner was intercepted and the content inside the Nylon bag was inspected. The Nylon bag contained 78 packets. The content inside six packets was tested by smelling and tasting the same. PW1 and others were convinced that the content inside the packets was arrack. PW3 and PW4 were

independent witnesses examined by the prosecution to prove the occurrence. However, they did not support the prosecution case. PW2 was the preventive officer, who accompanied PW1 for the patrol duty. PW2 had also given evidence corroborating with the evidence of PW1 in all material aspects.

6. The learned counsel for the revision petitioner has submitted that even though the incident in this case was on 13.3.2009 at about 6 p.m., the contraband and the samples were produced before the court only on 16.3.2009 and hence it cannot be said that the material produced before the court was the contraband seized from the revision petitioner and consequently, the revision petitioner is entitled to the benefit of doubt. The articles were received in the court on 16.3.2009 as per the judgment of the trial court.

Ext.P7 property list does not bear any date on which Ext.P7 was received by the court. However, Ext.P7 was prepared on 14.3.2009. There is absolutely no evidence with regard to the safe custody of the sample till the same was produced before the court.

7. The evidence of PW1 would show that PW1 had taken the samples from the spot. However, it is not discernible as to why the samples collected on 13.3.2009 could not be produced before the court till 16.3.2009. In the absence of any evidence with regard to the safe custody of the samples till the samples were produced before the court, it cannot be said that the samples drawn from the contraband on 13.3.2009 were the samples produced before the court. Therefore, it cannot be said that the samples

forwarded to the laboratory and examined in the laboratory were the samples drawn from the contraband seized from the revision petitioner and consequently, the revision petitioner is entitled to benefit of doubt. It is also to be noted that eventhough Ext.P11 certificate of chemical analysis was received by the court on 10.3.2010, the final report was filed before the court only on 26.10.2010. It is borne out from the evidence of PW6, who conducted the investigation in this case, that he prepared Ext.P10 scene mahazar only on 19.10.2010. Thus, there is inordinate and unexplained delay in conducting the investigation as well. The above said aspects were not considered by the courts below while appreciating the evidence. In the said circumstances, the appreciation of evidence by the courts

below cannot be correct. Consequently, 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 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/.14.12.2015

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PA to Judge