

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

Cr1.Rev.Pet.No. 2352 of 2011 ()

Cr1.A 807/2009 OF THE ADDITIONAL SESSIONS COURT, FAST TRACK
(ADHOC-I), KOZHIKODE

SC 524/2008 OF THE ASSISTANT SESSIONS COURT, KOYILANDY

REVISION PETITIONER(S)/APPELLANT/1ST ACCUSED::

RAJAN, S/O.KUNHIRAMAN, AGED 49 YEARS,
ELETTIL THAZHA HOUSE, PANANGAD AMSOM, DESOM
KOZHIKODE DISTRICT.

BY ADVS.SRI.P.R.SREEJITH
SRI.M.PROMODH KUMAR
SRI.P.P.SURENDRAN

RESPONDENT/RESPONDENT/COMPLAINANT::

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

R BY PUBLIC PROSECUTOR SRI.R.GITESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 16-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.2352 of 2011

Dated this the 16th day of December, 2015

ORDER

The accused in S.C.No.524 of 2008 on the files of the Assistant Sessions Court, Koyilandy, 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 18.4.2007 at 6.00 p.m., the revision petitioner was found in possession of 2 litres of illicit arrack in a plastic can, in contravention of the provisions of the Abkari Act.

4. Before the trial court, PW1 to PW7 were examined and Exts.P1 to P8 were marked for the prosecution, besides identifying MO1 Can. Exts.D1 and D2 were marked for the revision petitioner.

5. PW1 was the Preventive Officer, who detected the

offence. PW1 stated that on 18.4.2007 at about 5.50 p.m., the revision petitioner was found carrying a Can having a capacity of 2½ litres. On getting suspicion, the revision petitioner was intercepted and 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. The revision petitioner was arrested from the spot and the sample was taken and sealed. PW2 was the Excise Guard, who accompanied PW1 at the time of detection of the offence. He had also given evidence in tune with the evidence given by PW1. PW3 and PW4 were independent witnesses examined by the prosecution to prove the occurrence. However, they did not support the prosecution case, even though they admitted their signature in Ext.P2 Mahazar. Ext.P8 chemical analysis report would show that the contraband contained 22.89% by volume of Ethyl Alcohol. Thus, the evidence of PW1 and PW2 coupled with Ext.P8 would show that the revision petitioner was found in possession of 2 litres of illicit arrack in a Can

having a capacity of 2½ litres.

6. The courts below correctly evaluated 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 has been brought to my notice to indicate that the appreciation of the 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.

7. As regards the sentence, the learned counsel for the revision petitioner has pleaded for leniency. The revision petitioner was in custody in connection with this case from 18.4.2007 to 16.5.2007. There is no evidence before the court to indicate that the revision petitioner was previously convicted in any other offence of similar nature. There is also no evidence before the court that the revision petitioner was

involved in any other offence of similar nature, subsequent to the registration of this crime. The quantity involved in this case is 2 litres of arrack.

Considering the facts and circumstances as discussed above, 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 imprisonment already undergone by the revision petitioner and a fine of Rs.1,00,000/- (Rupees one lakh only) and in default to simple imprisonment for three months, to meet the ends of justice and accordingly, I order so.

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

The revision petitioner shall surrender before the trial court on **14.1.2016** to suffer the sentence.

Sd/-

B. SUDHEENDRA KUMAR
JUDGE

Scl/16.12.2015

True Copy

PA to Judge