

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

Crl.Rev.Pet.No. 1238 of 2014 ()

AGAINST THE JUDGMENT IN CRL.APPEAL 117/2013 of ADDL. DISTRICT & SESSIONS COURT - II, KASARAGOD DATED 09.04.2014

AGAINST THE JUDGMENT IN SC 54/2009 of COURT OF SESSION, KASARAGOD DIVISION, HOSDURG DATED 15.07.2013

REVISION PETITIONER/APPELLANT/ACCUSED:

K.BALAKRISHNAN AGED 42 YEARS
S/O.RAMAN, RESIDING AT MELADUKKAM COLONY
AJANUR VILLAGE, HOSDURG TALUK.

BY ADVS.SRI.C.K.SREEJITH
SRI.MURUGAN P.V.

RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE:

1. EXCISE RANGE INSPECTOR
HOSDURG RANGE, KASARAGOD - 671 315.
2. STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM - 682 031.

R BY PUBLIC PROSECUTOR SRI.S.V.SREEJITH

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

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No. 1238 of 2014

Dated this the 9th day of September, 2015

ORDER

The revision petitioner is the accused in Sessions Case No.54/2009 on the files of the Court of Session, Kasaragod Division, Hosdurg. The trial court convicted the revision petitioner under Section 8(1) r/w Section 8 (2) of the Abkari Act and sentenced him thereunder to simple imprisonment for 2 years and a fine of Rs.1,00,000/-. The appellate court confirmed the conviction and sentence passed by the trial court under Section 8(1) r/w Section 8(2) of the Abkari Act. Aggrieved by the said conviction and sentence, this revision petition has been filed.

2. Heard. The prosecution case is that on 20.06.2008 at about 6 p.m., while PW1 and excise party were on official duty, they intersepted the accused at a

place near Meladukam Desam. The revision petitioner was found in a perplexed condition and he made an attempt to retreat. So the excise party restrained him. The revision petitioner was found in possession of a can containing a liquid. PW1 inspected the contents of the can in presence of witnesses. Then it was revealed that it was arrack. The revision petitioner was arrested from the spot. The articles were seized under Ext.P2 mahazar. Sample was also taken by PW1 from the spot. The revision petitioner and the contraband articles along with the contemporary records were taken to the Excise office and thereafter the crime was registered.

3. Before the court below, PW 1 to PW5 were examined and Exts.P1 to P12 were marked for prosecution. PW1 and PW2 were the Preventive officer and Excise guard respectively, who were examined by the prosecution to prove the occurrence. PW1 stated that on 20.06.2008, at about 6 p.m., while he was on patrol duty along with the excise party, they intercepted the revision petitioner. At that time, the revision petitioner was carrying a five litre plastic can in his hand. On seeing the

excise party, the revision petitioner perplexed and attempted to go away from there. On getting suspicion, the revision petitioner was apprehended and the content in the can was inspected. It was found to contain 4 litres of arrack. He stated about the sampling and the preparation of Ext.P2 mahazar. He also stated about the arrest of the revision petitioner.

4. PW2 was an excise guard who was also on official duty, along with PW1 on the relevant day. He also supported the evidence of PW1 on all material aspects. Ext.P12 chemical examination report would show that the sample of liquid seized contained 18.2% by volume of ethyl alcohol . Thus the evidence of PW1 and PW2 with regard to the seizure of contraband is corroborated by Ext.P12 certificate. The courts below appreciated the evidence of PW1 and PW2 and came to a concurrent finding that the revision petitioner was found in possession of 4 litres of arrack on 20.06.2008 at about 6 p.m. in contravention of the provision of the Abkari Act.

5. It is contended by the revision petitioner that the independent witnesses examined by the prosecution did not

support the prosecution case and in the said circumstances, the revision petitioner is entitled to benefit of doubt. PW3 and PW4 were the independent witnesses examined by the prosecution to prove the occurrence. Both PW3 and PW4 admitted their signature in Ext.P2 seizure mahazar. However, they did not support the prosecution case in any other aspect. There is no allegation that the excise officials had any enmity against the revision petitioner to falsely implicate the revision petitioner in a case like this. It is settled law that the solitary evidence of the investigating officer with regard to the seizure can be relied upon to bring home the guilt of the accused, if his evidence is found to be reliable. Therefore, merely because PW3 and PW4 did not support the prosecution case, it cannot be said that the evidence of PW1 and PW2 has to be disbelieved on that reason alone, particularly when there is no material before the court to indicate that PW1 or PW2 had any ill-motive to implicate the revision petitioner in a case like this.

6. The records would show that the contraband article was seized as per Ext.P2 by PW1. The said contraband article was

produced before the court on the date of seizure itself. The endorsement in Ext.P5 property list would show that the sample taken by PW1 from the spot was produced before the court on the date of seizure itself. The said sample was sent from the court to the laboratory for examination. Ext.P12 report would show that the sample was received in the laboratory in sealed packets and the seals were found intact. Thus, from the evidence on record, it can be safely concluded that the sample analysed in the laboratory was the material seized from the revision petitioner.

7. Since there is concurrent finding on facts, this Court will not be justified in interfering with the same, unless the finding is perverse or incorrect. No material has been brought to my notice to indicate that the appreciation of evidence by the courts below was perverse or incorrect. In the said circumstances, the concurrent finding of the courts below that the revision petitioner committed the offence under Section 8(1) r/w Section 8(2) of the Abkari Act does not call for any interference by this Court. Considering the facts and

circumstances of the case, including the quantity of the contraband seized from the revision petitioner, I am of the view that the sentence awarded by the courts below can be modified and reduced to simple imprisonment for one year and a fine of Rs.1,00,000/- to secure the ends of justice and accordingly I order so.

In the result, this revision petition stands allowed in part, confirming the verdict of guilty and conviction passed by the courts below under Section 8(1) r/w Section 8(2) of the Abkari Act. The sentence awarded by the courts below under Section 8(1) r/w Section 8(2) of the Abkari Act stands modified and reduced to simple imprisonment for one year and a fine of Rs.1,00,000/-(Rupees one lakh only). In default of payment of fine, the revision petitioner shall undergo simple imprisonment for three months. The revision petitioner is entitled to set off for the period of his detention in connection with this case.

Sd/-

B.SUDHEENDRA KUMAR
JUDGE

sm/