

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1435 of 2014

Crl.A 171/2013 of ADDL. District & SESSIONS COURT - II, KASARAGOD
SC 326/2009 of ASSISTANT SESSIONS COURT, HOSDURG

REVISION PETITIONER/APPELLANT/ACCUSED:

K. GANGADHARAN, AGED 57 YEARS
S/O KUNJAMAN, KARAKKAKKUND, PULLUR VILLAGE
HOSDURG, KASARAGOD DIST.

BY ADVS.SRI.RAHUL SASI
SMT.NEETHU PREM

RESPONDENT/RESPONDENT/COMPLAINANT AND STATE:

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1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, KOCHI-31.
 2. EXCISE INSPECTOR
HOSDURG EXCISE RANGE.

BY PUBLIC PROSECUTOR, BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
28-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P No.1435 of 2014

Dated this the 28th day of October 2015

ORDER

The revision petitioner is the accused in S.C. No.326 of 2009 on the files of the Assistant Sessions Court, Hosdurg.

2. The trial court convicted the revision petitioner under Section 8(1) read with Section 8(2) of Abkari Act and sentenced him thereunder to rigorous imprisonment for one year and a fine of Rs.1,00,000/-. The appeal filed against the said conviction and sentence was dismissed. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard.

4. The prosecution allegation is that on 17.1.2008 at 5.30 p.m., the revision petitioner was found in possession of 5 litres of arrack, in contravention of the provisions of the Abkari Act.

5. Before the trial court, PW1 to PW7 were examined and Exts.P1 to P13 were marked for the prosecution. No evidence was adduced on the side of the defence.

6. PW4 was the Preventive Officer, who detected the offence. PW4 had given evidence before the Court in support of the prosecution case. PW5 is another official witness who also corroborated the evidence of PW1 in all material aspects. PW1 and PW2 are independent witnesses who did not support the prosecution case. However, they admitted their signature in Ext.P1 arrest memo and Ext.P2

seizure mahazar. Ext.P12 is the certificate of chemical analysis, which would show that the sample analysed in the chemical laboratory contained 25.7% by volume of ethyl alcohol.

7. The courts below evaluated the oral and documentary evidence adduced by the prosecution and concurrently found that the revision petitioner was found in possession of 5 Litres of arrack on 17.01.2008 at 5.30 p.m., in contravention of the provisions of the Abkari Act. 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 circumstance 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 by the courts below

that the revision petitioner committed the offence under Section 8(1) read with Section 8(2) of Abkari Act, does not warrant any interference by this Court.

8. As regards the sentence, the learned counsel for the revision petitioner has pleaded for leniency. The quantity of contraband involved in this case is 5 Litres. There is no evidence before the court that the revision petitioner was previously convicted for any other offence of similar nature. Considering the facts and circumstances of the case, including the quantity of contraband seized, I am of the view that the sentence awarded by the courts below can be modified and reduced to simple imprisonment for 45 days and a fine of Rs.1,00,000/- to secure the ends of justice. Accordingly, I order so.

In the result, this revision petition stands allowed in part,

- (i) confirming the verdict of guilty and conviction passed by the courts below under Section 8(1) read with Section 8(2) of the Abkari Act,
- (ii) the sentence awarded by the courts below under Section 8(1) read with Section 8(2) of the Abkari Act stands modified and reduced to simple imprisonment for 45 days and a fine of Rs.1,00,000/-(Rupees one lakh only).
- (iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for four months.

The revision petitioner is entitled to set off under Section 428 of the Code for the period of his detention in connection with this case.

Sd/-
B.SUDHEENDRA KUMAR,
JUDGE

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PA to Judge