IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 11TH DAY OF DECEMBER 2020 / 20TH AGRAHAYANA, 1942

CRL.A.No.1614 OF 2007

AGAINST THE ORDER/JUDGMENT IN SC 186/2003 DATED 13-08-2007 OF ADDITIONAL DISTRICT COURT (ADHOC)-III, THALASSERY

APPELLANT/ACCUSED:

ENIYENI SAJEEVAN,
S/O. VELLIADAN KUNHAN,
CHERUVANCHERI AMSOM,
KANNAVAM COLONY, KANNUR DISTRICT.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENT/COMPLAINANT:

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

SMT. M. K. PUSHPALATHA,SR.PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 11.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The appellant was convicted and sentenced by the court below under Section 8(2) of the Abkari Act.

2. The prosecution case is that on 17.05.2002 at about 6.45 p.m., the appellant was found in possession of 3 litres of arrack, in contravention of the provisions of the Abkari Act.

3. Heard.

4. The learned counsel for the appellant has argued that since there was long and unexplained delay in producing the contraband and the sample before the court, the appellant is entitled to benefit of doubt.

5. Ext.P5 is the property list, which would show that the contraband and the sample were produced

before the court only on 24.06.2002 even though the incident in this case was on 17.05.2002. PW1 produced the contraband and the sample before the court. It is not discernible as to why the contraband and the sample could not be produced before the court along with the accused even though the quantity of contraband involved in this case was only 3 litres. PW1 stated that it was only because of the pressure of work that the delay occurred in producing the contraband and the sample before the court. The said explanation given by PW1 cannot be said to be a reasonable and plausible explanation for the delay of more than one month and seven days in producing the contraband and the sample before the court. Therefore, there is no explanation for the delay in producing the contraband and the sample before the court. Since there was long

and unexplained delay from 17.05.2002 to 24.06.2002 in producing the contraband and the sample before the court, there cannot be any guarantee that the sample produced before the court and analysed in the laboratory was the sample drawn from the contraband seized from the appellant. In the said circumstances, the appellant is entitled to benefit of doubt.

In the result, this criminal appeal stands allowed, setting aside the conviction and sentence passed by the court below and the appellant stands acquitted. The bail bond of the appellant stands discharged.

Sd/-

B.SUDHEENDRA KUMAR

JUDGE

Nkr/11.12.2020