**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE N.ANIL KUMAR**

**TUESDAY, THE 01ST DAY OF DECEMBER 2020 / 10TH AGRAHAYANA, 1942**

**Crl.Rev.Pet.No.780 OF 2007**

**CRA 436/2001 OF ADDITIONAL SESSIONS COURT (ADHOC)-II, THALASSERY**

**CC 728/1997 OF JUDICIAL MAGISTRATE OF FIRST CLASS, MATTANNUR**

**REVISION PETITIONER/S:**

**K.BHASKARAN, S/O KANNAN,**
**AGED 43 YEARS, KEEZHOOR AMSOM, IRITTY.**

**BY ADV. SRI.C.P.PEETHAMBARAN**

**RESPONDENT/S:**

**STATE OF KERALA**
**REPRESENTING S.H.O., IRITTY POLICE STATION,,**
**REPRESENTED BY THE PUBLIC PROSECUTOR,, HIGH COURT OF KERALA, ERNAKULAM.**

**OTHER PRESENT:**

**SR PP M S BREEZ**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 01.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**O R D E R**

The revision petitioner was the accused in CC No. 728 of 1997 on the file of the Judicial First Class Magistrate Court, Mattannur and the appellant in Crl. Appeal No. 436 of 2001 on the file of the Additional Sessions Court, Adhoc-II, Thalassery. The offence alleged against the accused was punishable under Section 55(a) of the Abkari Act, 1 of 1077 (hereinafter referred to as, "the Act").

2. The trial court, by its judgment dated 30.07.2001, found the accused guilty of the offence punishable under Section 55(a) of the Act and accordingly, convicted and sentenced him to undergo rigorous imprisonment for six months and also to pay a fine of Rs.25,000/- and in default of payment of fine to undergo simple imprisonment for three months more.

3. Challenging the conviction and sentence, the accused preferred Crl.Appeal No. 436 of 2001 before the Additional Sessions Court, Adhoc-II, Thalassery. The learned Additional Sessions Judge dismissed the appeal, confirming the conviction and sentence imposed by the trial court.

4. The prosecution case, in brief, is that on 06.12.1996 at about 6.15 pm, the accused was found in possession of 80 packets of Karnataka made arrack, each packet containing about 100 ml of arrack in a plastic bag, near the bus waiting shed at Kallumutty in Payam amsom in contravention of the Act and Rules thereunder and thereby, committed the offence punishable under Section 55(a) of the Act.

5. During the trial of the case, PWs 1 to 5 were examined and marked Exts.P1 to P4 and MO1 series on prosecution side. On closing the evidence of the prosecution, the accused was

questioned under Section 313(1)(b) of the Code of Criminal Procedure. He denied all the incriminating circumstances appearing in the evidence against him. When the accused was called upon to enter on his defence, no defence evidence was adduced.

6. Heard Sri.C.P.Peethambaran, the learned counsel for the revision petitioner; and Sri.M.S.Breez, the learned Senior Public Prosecutor for the respondent-State.

7. PW3, the then Sub Inspector of Police, Iritty, detected the crime while he was on patrol duty along with PW1, a police constable working under him. He deposed before the court that on 06.11.1996, while he was conducting patrol duty in Koottupuzha locality and when they reached Kallumutty at about 6.15 pm, the accused was found near the bus waiting shed carrying a plastic bag in his hand. On suspicion, PW3 inspected the bag and found

that the bag contained 80 packets of Karanataka made arrack, each packet containing about 100 ml of arrack. Accordingly, the accused was arrested and the contraband articles were seized in the presence of the witnesses in accordance with Ext.P1 mahazar. Sampling and sealing were done in accordance with rules. PW3 identified MO1 series before the court. PW1 supported the version of PW3. He also identified MO1 series as the articles seized from the possession of the accused. PW2 is an independent witness, who had occasion to witness the seizure of contraband articles from the hands of the accused. Relying on the evidence of PWs 1 to 3 and Exts.P1 and P2, the trial court entered a finding that MO1 series contraband articles were seized from the possession of the accused.

8. The learned counsel for the revision petitioner submitted that the occurrence in

this case was admittedly on 06.12.1996. Ext.P1 seizure mahazar was prepared on 06.12.1996 itself in the presence of PWs 2 and 3. Ext.P1 seizure mahazar was forwarded to the court and it appears from Ext.P1 that the same was received in court on 07.12.1996. However, there is no evidence adduced by PW3 to show that the list of property was forwarded to the court right in time, which was available among the court records. It is seen that PW3 prepared the property list on 07.12.1996. However, the list of property was produced before the court on 16.12.1996. The learned magistrate made a specific endorsement to verify and receive the articles in the list of property on 16.12.1996. This would go to show that the property was produced before the court only on 16.12.1996. There is no evidence adduced by the prosecution to show that the contraband seized from the accused was

produced before the court without delay. There was inordinate delay in producing the contraband before the court. As per the records, the contraband was produced ten days after the date of occurrence. The delay itself was not explained. Unless and until proper explanation was offered to prove that the materials seized pursuant to the seizure of the same from the accused were kept in the very same condition seized from the accused until 16.12.1996, it would not be proper to rely on the material objects produced before the trial court. Further, the forwarding note prepared by PW3 was not produced before the trial court. The trial court merely relied on Ext.P4 chemical analysis certificate and entered a finding that the accused was in possession of the contraband article in contravention of the Act and Rules framed thereunder. Therefore, the conviction and

sentence imposed by the trial court against the accused, which have been confirmed in appeal, are clearly unsustainable and are liable to be set aside.

9. Both the trial court and the appellate court analyzed the evidence wrongly and convicted and sentenced the accused for the offence punishable under Section 55(a) of the Act, which resulted in serious miscarriage of justice. Hence, the conviction and sentence imposed by the trial court against the accused, as confirmed by the appellate court, are liable to be set aside in revision.

In the result, the criminal revision petition is allowed. The revision petitioner/accused is found not guilty of the offence punishable under Section 55(a) of the Act and he is acquitted thereunder. Cancelling his bail bond, this Court directs that he be set at liberty. If any amount is deposited pursuant

to an interim order passed by this Court, the same shall be released to the revision petitioner/accused in accordance with law. Pending applications, if any, stand disposed of.

**Sd/-**

**N.ANIL KUMAR**

**JUDGE**

Bka/02.12.2020