IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.ANIL KUMAR

MONDAY, THE 17TH DAY OF AUGUST 2020 / 26TH SRAVANA, 1942

Crl.Rev.Pet.No.2298 OF 2005

AGAINST THE JUDGMENT IN CRA 326/2002 DATED 22-04-2005 OF III ADDITIONAL SESSIONS COURT, KOZHIKODE

AGAINST THE JUDGMENT IN CC 1175/1998 DATED 10-06-2002 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KOYILANDY

REVISION PETITIONER/APPELLANT/ACCUSED:

SABU @ SABUNATHAN
S/O.SEKHARAN NAIR
KAITHAPOYILMEETHAL,
THURUTHUMALA, AVIDANALLUR AMSOM,
POONATH DESOM,, KOYILANDY.

BY ADV. SRI.P.V.ANOOP

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

1 **EXCISE INSPECTOR**
BALUSSERY.

2 **STATE OF KERALA REPRESENTED BY**
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

SMT.M.N.MAYA, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17.08.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

Dated this the 17th day of August 2020

The revision petitioner is the accused in C.C.No.1175 of 1998 on the file of the Judicial First Class Magistrate Court, Koyilandy. By the judgment dated 10.6.2002, the learned Magistrate convicted and sentenced the accused to undergo simple imprisonment for six months and to pay a fine of Rs.25,000/- in default of payment of fine, to undergo simple imprisonment for one month more for the offence under Section 55(g) of the Kerala Abkari Act (Act 1 of 1077).

2. Feeling aggrieved by the conviction and sentence, the accused preferred Crl.Appeal No.326 of 2002 before the Sessions Court, Kozhikode. The learned Sessions Judge dismissed the appeal confirming the conviction and sentence imposed by the trial court by the judgment dated 22.4.2005.

3. The prosecution case in brief is hereunder below. On 2.8.1996, at about 12.30 P.M., while the Preventive Officer, Balussery Excise Range, was conducting patrol duty within the jurisdiction of Koyilandy Taluk, the accused was found carrying a

plastic can containing 18 litres of wash which is mainly used for preparing illicit liquor. The contraband was seized in accordance with law and the accused was arrested from the spot. PW5, the Excise Inspector, Balussery Excise Range conducted investigation in this case and filed final report before the trial court for the offence punishable under Section 55(g) of the Abkari Act.

4. Heard Sri.P.V.Anoop, the learned counsel for the revision petitioner and Smt.M.N.Maya, the learned Public Prosecutor.

5. PW1 seized MO1 can containing 18 litres of wash from the accused on 2.8.1996, at about 12.30 P.M., while he was conducting patrol duty in Koyilandy Taluk. The accused was arrested at the spot and the sample was taken from MO1. Label was affixed and Exhibit-P1 mahazar was prepared. Later, he produced records before PW5, who registered the case to investigate the crime. PW2 is yet another Preventive Officer of Balussery Excise Range at the time of the occurrence. He was also present along with PW1 when the offence was detected.

Both PW1 and PW2 identified MO1 before the court. PW3 is a witness to Exhibit-P1 mahazar. However, he turned hostile to the prosecution denying his signature contained in Exhibit-P1. PW4 is another witness to Exhibit-P1 mahazar. According to him, he had put signature in Exhibit-P1. However, he maintained that he did not see the alleged seizure of wash. PW3 submitted Exhibit-P3 forwarding note before court. When he was cross examined, he admitted that the property was sent to the court on 3.8.1996 and it was reached in the court only on 5.8.1996. Exhibit-P4 chemical analysis report would show that the sample taken contained ethyl alcohol by volume of 12.06%.

6. On going through the evidence and the documents, Exhibits-P1 to P4 alone were marked on the side of the prosecution. Exhibit-P1 is the seizure mahazar, Exhibit-P2 is the occurrence report, Exhibit-P3 is the copy of the forwarding note and Exhibit-P4 is the chemical analysis report respectively. The property list is not seen marked. Admittedly, the property was sent to the court on 3.8.1996 and it was reached in the court only on 5.8.1996. It is true that the delay is only for two days. Non

production of property list as an exhibit in the case indicates that the property has not sent to the court in time as spoken by PW5.

7. Exhibit-P1 mahazar and Exhibit-P3 forwarding note sent to the Joint Chemical Examiner to Government would show that the specimen impression of seal is not seen affixed therein. In this case, the prosecution mainly relied upon the report of chemical analysis in respect of the sample sent for analysis. The conviction cannot be entered against the accused in a prosecution for the offence under Section 55(g) of the Abkari Act unless it is proved that the sample which was analysed by the chemical examiner was the very same sample from the liquid allegedly seized from the possession of the accused. Further, the prosecution is obliged to prove all the links starting from the seizure of the sample till the same reached in the hands of the chemical examiner.

8. PW1 adduced evidence to show that the contraband was seized from the possession of the accused and the sample was taken from the accused in his presence. He also stated before court that the sample was properly sealed in the presence

of the accused. In the light of the evidence adduced by PW1, it is obligatory on the part of the prosecution to prove the nature of the seal which is alleged to have been put on the sample and the contraband. Going by Exhibit-P1 mahazar and Exhibit-P3 forwarding note, the sample seal is not seen affixed therein. It creates a reasonable doubt on the evidence of PW1, 2 and 5 that the contraband was not seized from the revision petitioner as alleged by the prosecution. Had the sample seal been provided in Exhibit-P3 forwarding note to the chemical examiner, it would have been possible for them to get it compared and come to a conclusion that the seal affixed on the sample tallies with the sample so provided. For the case in question, there is no evidence to prove the seal affixed on the sample bottle or the sample of the seal so affixed was forwarded to the chemical examiner. In the absence of reliable evidence, no evidentiary value can be attached to Exhibit-P4 report submitted by the chemical examiner. Therefore, there is no legal evidence in this case to come to a conclusion that MO1 seized from the possession of the accused contained wash as alleged. The trial

court as well as the appellate court appreciated the evidence on record illegally. Hence, the judgment of the trial court as confirmed by the appellate court is illegal, irregular and improper.

In the result, the revision is allowed. The conviction and sentence imposed by the trial court as confirmed by the appellate court is set aside. The revision petitioner/accused is acquitted for the offence punishable under Section 55(g) of the Abkari Act. Cancelling his bail bond, this Court directs that he be set at liberty.

Sd/-

N.ANIL KUMAR

JUDGE

csl