IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.ANIL KUMAR

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

Crl.Rev.Pet.No.3380 OF 2009

AGAINST THE ORDER/JUDGMENT IN CRA 174/2007 DATED 29-07-2009 OF ADDITIONAL SESSIONS JUDGE (ADHOC-II), KASARAGOD.

AGAINST THE ORDER/JUDGMENT IN SC 536/2004 DATED 24-03-2007 OF ASSISTANT SESSIONS COURT, KASARAGOD, HOSDRUG.

REVISION PETITIONER/APPELLANT/1ST ACCUSED:

SATHEESAN, S/O. NARAYANAN,
MANIPPADI, KUDLU,
MADHUR VILLAGE, KASARGOD TALUK.

BY ADVS.
SRI. PHILIP T. VARGHESE
SRI. SHUBHA ABRAHAM
SMT. AFSANA ASHRAF
SRI. BIBIN DIVAKARAN
SMT. SUNANDA SUKUMARAN
SRI. THOMAS T. VARGHESE

RESPONDENT/COMPLAINANT:

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

SRI. M. S. BREEZ, SR. PP.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 11.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

Dated this the 11th day of December 2020

The revision petitioner is the 1st accused in S.C No.536/2004 on the file of the Assistant Sessions Court, Kasaragod at Hosdurg and the appellant in Criminal Appeal No.174/2007 on the file of the Additional Sessions Judge (Adhoc) – II, Kasaragod. The offence alleged against the accused is punishable under Section 55 (a) of the Abkari Act (hereinafter referred to as "the Act").

2. By its judgment dated 24.03.2007, the trial court convicted the accused Nos.1 and 2 for the offence punishable under Section 55 (a) of the Act and sentenced to undergo simple imprisonment for two years each and also to pay a fine of Rs.1,00,000/- each, and in default of payment of fine to undergo simple imprisonment for a period of three months each. The 2nd accused was further convicted and sentenced to pay a fine of Rs.500/- and in

default of payment of fine to undergo simple imprisonment for a period of two weeks for the offence punishable under Section 3 (1) read with Section 181 of the Motor Vehicles Act.

3. Challenging the conviction and sentence, the 1st accused preferred Crl. Appeal No.174/2007 and the 2nd accused preferred Crl. Appeal No.163/2007 before the Additional Sessions Judge (Adhoc) – II, Kasaragod. By its common judgment dated 29.07.2009, the learned Sessions Judge allowed the appeal in part confirming the conviction and modifying the sentence. The sentence awarded to the 1st accused is modified to imprisonment for one year and to pay a fine of Rs.1,00,000/- and in default of payment of fine to undergo simple imprisonment for three months more. So far as the conviction and sentence under Section 55 (a) of the Act as against the 2nd accused is concerned, the conviction and sentence stands set aside. However, the conviction and sentence awarded to the 2nd accused under the Motor Vehicles Act is confirmed. Challenging the aforesaid conviction and sentence, the 1st accused preferred

this revision before this Court.

4. The prosecution case, in brief, is hereunder:-

The 2nd accused, being the driver of the autorickshaw bearing registration No.KL-14A/1017, along with the 1st accused was engaged in transporting 1500 packets of Karnataka made arrack, each packet having the capacity of 100 ml. each. It was detected by C.W.1 and his police party upon getting prior information on 16.10.2001 at 9.40 P.M at a place called Thrikkannad and thereby they are said to have committed the offence under Section 55 (a) of the Act.

5. During the trial of the case, PW1 to PW7 were examined and marked Exts.P1 to P8 and MO1 on prosecution side. On closing the evidence of the prosecution, accused Nos.1 and 2 were questioned under Section 313 (1) (b) of Cr.P.C. They denied all the incriminating circumstances appearing in the evidence against them. No defence evidence was adduced by the 1st accused. However, the 2nd accused himself was examined as DW1 and one of his friends was examined as DW2.

6. Heard Sri.Philip T. Varghese, the learned counsel for the revision petitioner and Sri. M. S. Breez, the learned Senior Public Prosecutor.

7. Going by the prosecution case, it is very clear that the occurrence in this case was detected on 16.10.2001 and Ext.P4 First Information Report was also recorded on the very same day. PW1 is the Detecting Officer. In this case, Ext.P4 First Information Report, Ext.P2 Arrest Memo and Ext.P3 Seizure Mahazar were produced before the trial court on 17.10.2001. When the accused was arrested, MO1 was seized from his custody. In all Abkari cases, it is the duty of the Abkari Officer to produce the material objects before the court without any delay. In the case on hand, Ext.P4 First Information Report was produced before the court right in time along with the accused on 17.10.2001. However, Ext.P7 property list prepared at the time of arrest, Ext.P8 forwarding note and MO1 along with the samples taken were produced before the court on 22.10.2001 only. Going by the records, it is apparent that there was delay in producing the material

objects before the court. It is the duty of the Detecting Officer to adduce evidence before the court to show that the material objects collected by him were under his safe custody during the relevant time without any change whatsoever. Apart from his bald statements during trial that those materials were under his safe custody, no other circumstances were brought out to believe his version that the material objects were under his safe custody from 16.10.2001 to 22.10.2001 as alleged by him. When Ext.P4 First Information Report was produced before the court on 16.10.2001, the delay in furnishing the other documents before the court after five days from the date of arrest had caused serious prejudice to the accused.

8. Further, the accused was a passenger in an autorickshaw driven by the 2nd accused. The 2nd accused was acquitted by the appellate court finding that he had no nexus with the crime whereas the passenger was implicated mainly for the reason that he was not examined as a witness to offer an explanation that he was only a passenger in the autorickshaw. In a criminal trial, it is the

duty of the prosecution to prove the offence beyond reasonable shadow of doubt. The accused is presumed to be innocent until the offence against him is proved beyond doubt. The accused has no responsibility to prove before the trial court that he was only a passenger in the autorickshaw. To attract an offence under Section 55 (a) of the Act, it is necessary on the part of the prosecution to prove that in contravention of the provisions under the Act, the accused transited or possessed the contraband liquor as contemplated under Section 55 (a) of the Act. Going by the evidence in this case and the surrounding circumstances including the delay in producing the material objects before the trial court, this Court is of the view that, this is not a fit case to invoke the provisions under Section 55 (a) of the Act based on the available evidence in this case. Both the trial court as well as the appellate court erroneously appreciated the evidence on record and entered a finding that the 1st accused was guilty of the offence punishable under Section 55 (a) of the Act. Hence, the conviction and sentence under Section 55(a) of the Act

as against the 1st accused/revision petitioner is liable to be set aside.

In the result, this Criminal Revision Petition stands allowed. The 1st accused/revision petitioner stands acquitted for 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 fine amount is deposited during the pendency of the proceeding, the same shall be refunded to the revision petitioner/accused in accordance with law. Pending applications, if any, stand disposed of.

Sd/-

N.ANIL KUMAR
JUDGE

SPR