

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 17TH JULY 2009 / 26TH ASHADHA 1931

CRL.A.No. 673 of 2009(D)

SC.195/2004 of ADDL. SESSIONS COURT (ADHOC), KALPETTA

APPELLANT(S):

P.C.JOY, C.NO.5370, CENTRAL JAIL,
KANNUR.

BY ADV. MR.SUNIL.J[STATE BRIEF]

RESPONDENT(S): RESPONDENT

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

BY PUBLIC PROSECUTOR MR.C.M.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 17/07/2009 , THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

M.N. KRISHNAN, J.

CRL.A.NO.673 OF 2009

Dated this the 17th day of July, 2009

JUDGMENT

This is an appeal preferred against the conviction and sentence passed by the Additional Sessions Judge (Adhoc)-I, Kalpetta in S.C.No.195/2008. The accused was charge sheeted for the offences under Sections 8 (1) and (2) of the Abkari Act, punished thereunder and sentenced to undergo R.I for one year and to pay a fine of Rs. One lakh and a default sentence of three months. It is against that decision, the accused has come up appeal through jail. As there was no counsel to assist him, this Court appointed a State brief, Advocate Suni J, and he had effectively argued the case before me.

2. The points that arise for determination in the appeal are whether the materials are sufficient to hold that the accused has committed the offences under Sections 8(1) and (2) of the Abkari Act (2) in case of guilt, what is the proper punishment.

3. It is the case of the prosecution that on 3.6.2003 at

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about 7 p.m the accused was found in possession of 45 packets of arrack 100 ml each made in Karnataka near Bavali. He was apprehended, examined and liquid was found out. It was known to be illicit arrack by taste and smell and thereafter sample was taken transferring from two packets which was sealed and later produced before the court.

4. The person, who had detected and taken the sample is PW1. He was working as a guard at Excise Range, Mananthavady. According to him, while he was on duty, he found the accused coming with a black plastic cover. He was intercepted and directed him to show the cover and it was revealed that it contained 45 packets of Karnataka made illicit arrack. To know the contents, he opened one packet and tasted it and on satisfaction another packet was also opened and in a 375 ml capacity bottle, sample was taken and sealed. The remaining unopened packets were put in the cover, packed and sealed. Nothing has been brought out to discredit his evidence in this case.

5. Pw2 - is a Sales Tax Inspector, who was working on

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very next to the check post, had also spoken about the arrival of the accused, conduct of search, seizure, sampling and sealing. Nothing has been brought out to discredit his evidence as well. So, the evidence of PWs 1 and 2 supports the case of the prosecution.

6. PW3 is an independent witness, who had turned hostile as usual and as per the decision reported in **Sivaraman v. State of Kerala** (1981 KLT SN 9 Page 17) it has been held that the only precaution to be taken to accept the evidence of the official witness is to scrutinize it and to find out whether they are reliable. The lower court also had considered the alleged flaws in the case of the prosecution. The main point that was argued was regarding the sample taken. Actually, the sample that was sent for chemical analysis was 200 ml in a 375 ml bottle. But, in some documents it is stated as 180 ml. It has to be remembered that originally one packet was opened and it was tasted and the remainder therein plus another fresh packet was poured into another bottle for the purpose of sampling. So, the

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minor discrepancy regarding the sample whether it is 180 ml or 200 ml is not a matter that will materially affect the case of the prosecution. Pws 1 and 2 had clearly and cogently deposed before the court about the things that had transpired and I find that the materials available are sufficient to hold the accused guilty under Sections 8(1) and (2) of the Abkari Act.

7. Then turning to the question of sentence. It is submitted by the learned counsel that the accused was aged 62 years at the time of the trial and so, some leniency may be shown. The materials show that he is involved in another case as well, but considering the factum of his age and the quantity involved in the case, I am inclined to show some leniency thereby reducing the sentence to 9 months and retaining the default sentence as 3 months as held by the court below.

8. In the result, the criminal appeal is disposed of as follows:

The conviction passed under Sections 8(1) and (2) is confirmed but the sentence is modified and the accused is

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sentenced to undergo R.I for 9 months and to pay a fine of Rs. One lakh and in default of which to undergo further S.I for three months. He will be entitled to set off as contemplated under law.

M.N. KRISHNAN, JUDGE

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M.N. KRISHNAN, J.

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17th day of July, 2009

JUDGMENT

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