IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 05TH DAY OF FEBRUARY 2021 / 16TH MAGHA,1942

CRL.A.No.297 OF 2007

AGAINST THE ORDER DATED 23-01-2007 IN SC 358/2005 OF ADDITIONAL SESSIONS COURT, FAST TRACK COURT NO.III (AD HOC), MANJERI

APPELLANT/ ACCUSED :

CHERKULATH SURESH,
AGED 34 YEARS,
S/O. KUMARAN, CHERKULATH,
PACHATTIRI AMSOM, PERIYAPPURAM DESOM,
TIRUR TALUK.

BY ADV. SRI.K.M.SATHYANATHA MENON
BY ADV. ARUN KUMAR

RESPONDENTS/ COMPLAINANT & STATE :

1. THE EXCISE INSPECTOR
   EXCISE RANGE OFFICE, TIRUR,
   MALAPPURAM DISTRICT.

2. THE STATE OF KERALA REPRESENTED BY
   THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   HIGH COURT BUILDINGS, HIGH COURT ROAD,
   ERNAKULAM, KOCHI - 682 031.

BY PUBLIC PROSECUTOR ADV.DHANIL M.R.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03-02-2021, THE COURT ON 05-02-2021 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 5th day of February 2021

The appellant is the accused in SC.No.358/2005 on the files of the Additional Sessions Court, Fast Track Court No.III (Ad hoc), Manjeri. He was found guilty for the offence under Section 8(1) of the Abkari Act and was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,00,000/- in default to undergo simple imprisonment for six months by judgment dated 23.01.2007. The appellant assails the aforesaid conviction and sentence.

2. The prosecution alleged that on 24.12.2004, at around 6.50 a.m., the Excise Circle Inspector, while on patrol duty found the accused in possession of five litres of illicit arrack carried by him for sale in a can. After completing the formalities and arrest of the accused, the crime was registered. After completion of investigation and other statutory requirements, the final report was filed. On noticing the existence of a case exclusively triable by a Court of Session, the learned Magistrate referred the case to the Court of Sessions.

3. In order to prove the prosecution case, PWs 1 to 5

were examined and Exts.P1 to P8 were marked apart from material objects MO1. After analysing the evidence adduced in the case, the learned Sessions Judge found the accused guilty and convicted him and imposed the sentence as mentioned earlier.

4. I have heard Adv.K.M.Sathyanatha Menon along with Ad.Arun Kumar as well as the learned Public Prosecutor Adv.Dhanil M.R.

5. The learned counsel for the appellant vehemently contends that the prosecution case cannot be believed at all since there are no independent witnesses who were examined to prove the seizure of the contraband article from the accused. He also pointed out that though PW1 was examined to prove the seizure of the contraband articles from the appellant, he turned hostile and though questions were put to him by the prosecution, nothing beneficial to the prosecution were elicited. The learned counsel enthusiastically canvassed that in such circumstances, the benefit of doubt, atleast, must be given to the accused.

6. The learned Public Prosecutor on the other hand argued that the case of the prosecution was clearly proved in the instant case and that there was no basis for the contention of the appellant that he should be given the benefit of doubt.

7. I have considered the rival contentions. On 24.12.2004, the accused was alleged to have been apprehended by the Excise Inspector and his team of officers, who were on patrol duty. Even though PW1 turned hostile to the prosecution and denied of having seen the seizure of arrack from the accused, the evidence of official witnesses are convincingly clear that the accused was apprehended along with the arrack. In spite of severe cross examination, the official witnesses stood firm, regarding the seizure of arrack from the accused. In the aforesaid circumstances, I am of the view that the finding of the trial court that even though PW1 had turned hostile, there was sufficient evidence to prove the seizure of the contraband from the accused. PWs 2 and 3 have also clearly spoken to about the manner in which the accused was found possessing a can containing arrack and the manner in which the accused was apprehended. I agree with the said conclusion arrived at by the learned Sessions Judge.

8. It is seen from Ext.P6 forwarding note that the same was prepared on 24.12.2004 with the sample seal of PW5 and it was presented before the Judicial First Class Magistrate's Court, Tirur on the same day itself. Though MO1 was returned for safe custody, the sample was retained by the court and was forwarded to the Regional

Chemical Examiners Laboratory later. Thus, no procedural infirmity could be found out and the prosecution had clearly proved that the sample taken from MO1 was sent for chemical analysis resulting in Ext.P7 certificate. Ext.P7 states that the sample involved in the offence showed the presence of Ethyl Alcohol having 23.68% by volume. The Learned Sessions Judge after an elaborate consideration of the entire materials and the evidence adduced in the case concluded that the accused has committed the offence alleged against him. After appreciating and considering the evidence adduced in the case, I am of the view that the learned Sessions Judge was justified in concluding that the accused is guilty of the offence alleged.

9. The learned counsel for the appellant in the alternative had argued that the sentence of imprisonment imposed upon the accused is too harsh in the nature of the case that was alleged against him. It was also pointed out that the incident occurred more than 15 years ago and that the quantity involved was only minimal and that after the incident involved in this case, there had been no allegations of involvement of the appellant in a crime of any nature.

10. On an appreciation of the aforesaid submissions of the learned counsel for the appellant, I am of the view that taking

into reckoning the long passage of time and also taking note of the fact that the appellant had already undergone incarceration from 24.12.2004 till 07.02.2005, a modification can be made to the sentence imposed. The sentence of imprisonment imposed upon the appellant shall therefore stand modified to the period already undergone. The fine amount imposed by the learned Sessions Judge being the minimum fine provided under law, the same is affirmed.

In the aforesaid circumstances, while confirming the conviction of the appellant under Section 8(1) of the Abkari Act, the sentence of imprisonment imposed by the learned Sessions Judge is modified to the period already undergone. However, the sentence of fine imposed and the default sentence imposed by the learned Sessions Judge stands affirmed.

The appeal is allowed in part as above.

Sd/-
BECHU KURIAN THOMAS, JUDGE

RKM