

NHALIYAM MAKKIL RAVEENDRAN

v.

STATE OF KERALA

(Criminal Appeal No. 801 of 2008)

MAY 5, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Kerala Abkari Act – ss. 55 (a) – Accused found in possession of arrack – Trial court convicting u/s 55 (a) and sentencing to 3 years imprisonment and fine of Rs. 1 lakh – Appellate court upholding conviction, but reducing the sentence to 1 year imprisonment – High Court upholding the order – On appeal, held : Accused was liable to be punished under s. 55 (a) – In the facts of the case sentence is reduced to 9 months imprisonment – However, punishment of fine of Rs. 1 lakh maintained.

According to the prosecution, the accused was found in possession of 4 litres of arrack made in Karnataka. Five witnesses were examined to further the prosecution version. Trial Court found him guilty of offence punishable u/s 55 (a) of Kerala Abkari Act, 1077 and sentenced him to 3 years simple imprisonment and to fine of Rs. 1 lakh with default stipulation. Appellate court upheld the conviction but reduced the sentence to one year. High Court, in revision, did not interfere with the order. Hence the present appeal.

Disposing of the appeal, the Court

HELD: Present case is one which is covered by Section 55(a) of Kerala Abkari Act, 1077. Two types of punishments are provided in Section 55. One is relating to offence other than the offence falling under clause (d) or clause (e) where the imprisonment is extended to 10 years and with fine which shall not be less than rupees

- A one lakh. Offence falling under clause (d) and (e) carry lesser term of sentence which may extend to one year or alternatively with fine which may extend to rupees ten thousand or with both. There is no minimum sentence provided but the outer limit of the punishment is 10 years.
- B At the same time imposition of fine of rupees one lakh is statutorily provided without any exception. However, in the peculiar facts of the case reduction of the sentence to 9 months is directed. The amount of fine which is stated to have been deposited is maintained. [Paras 8, 9 and 10] [713-C, D, E, F]
- C

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 801 of 2002.

- D From the Judgment and Order dated 4.7.2007 of the High Court of Kerala at Ernakulam, in Criminal Rev. Pet. No. 2424 of 2007.

Shabu Sreedharan, P.A. Noor Muhamed and Rameshwar Prasad Goyal for the Appellant.

- E R. Sathish for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

- F 2. Challenge in this appeal is to the judgment of learned Single Judge of the Kerala High Court dismissing the Revision Petition filed by the appellant. On the allegation that on 13.8.1999 the accused was found to be in possession of 4 litres of arrack made in Karnataka in 40 packets, each containing 100 ml. It was held that the accused was guilty of offence punishable under Section 55(a) of the Kerala Abkari Act, 1077.
- G

- H 3. Law was set into motion as the prosecution was of the view that the accused was in possession of liquor in contravention of the provisions of the Act. Five witnesses were examined to further the prosecution version. Accused pleaded innocence. Learned Principal Assistant Sessions Judge,

Thalassery found the appellant guilty for commission of offence and sentenced him to under simple imprisonment for three years and also to pay a fine of Rs.1,00,000/- with default stipulation. An appeal was preferred before the Sessions Court, Thalassery which was dismissed. In the revision, the basic contention was that the alleged offence was committed on 13.8.1999 the seized property was produced in the Court on 16.8.1999. There was three days delay which was fatal. Before the High Court it was alternatively submitted that the sentence as imposed was high. The High Court noted that the offence was detected on 13.8.1999 by PW-4, a Sub-Inspector of Police, Iritty and his police party while they were on patrol duty. While they reached near the bus stop the accused appellant was seen alighting from a bus with cloth bag in his hand. Getting suspicious PW-4 tried to stop him. The accused hurriedly crossed the road and ran away. He was chased and apprehended by the police party and on examination of the cloth bag in his hand it was found that the same contained 40 packets of some liquid suspected to be some illicit arrack. The contraband liquor was seized. The contents of two out of 40 packets were emptied into a bottle and sealed. Before the sample bottle was seized, the accused as well as the properties were taken to the police station where the registration of the case was done. The articles were seized at 6.40 in the afternoon. Samples were produced in Court on 16.8.1999 and till then they were in safe custody. The letter of the Magistrate clearly shows that when the articles were produced before him they were packed and sealed.

4. The survey of the Chemical Analyst (Exh. P-6) shows that seal of the sample bottle tallied with the specimen seal separately sent. It was noted that possession of arrack, import and export transaction, storage and sale of arrack in the State of Kerala was totally banned w.e.f. 3.6.1997. The appellate authority while upholding the conviction dismissed the appeal, but the sentence was reduced to one year. In revision, no interference was done by the High Court.

5. Learned counsel for the appellant submitted that the

A evidence on record does not make out a case for conviction and in any event the sentence is harsh.

6. Learned counsel for the respondent-State on the other hand supported the order.

B 7. Section 55 of the Act so far as relevant reads as follows:

"For illegal import, etc:- Whoever in contravention of this Act or of any rule or order made under this Act-

C (a) imports, exports, transports, transits or possesses liquor or any intoxicating drug; or

(b) manufactures liquor or any intoxicating drug;

(c) xxx

D (d) taps or causes to be tapped any toddy-producing tree, or

(e) draws or causes to be drawn toddy from any tree; or

(f) constructs or works any distillery, brewery, winery or other manufactory in which liquor is manufactured; or

E (g) uses, keeps or has in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing liquor other than toddy or any intoxicating drug; or

F (h) bottles any liquor for purposes of sale; or

(i) sells or stores for sale liquor or any intoxicating drug; shall be punishable

G (1) for any offence, other than an offence falling under clause (d) or clause (e), with imprisonment for a term which may extend to ten years and with fine which shall not be less than rupees one lakh and

H (2) for an offence falling under clause (d) or clause (e) with imprisonment for a term which may extend to one

year, or with fine which may extend to ten thousand rupees, or with both. A

Explanation:- For the purpose of this section and section 64A, "intoxicating drug" means any intoxicating substance, other than a narcotic drug or psychotropic substance regulated by the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985), which the Government may by notification declare to be an intoxicating drug." B

8. Undisputedly, the case at hand is one which is covered by Section 55(a) of the Act. Two types of punishments are provided in section 55. One is relatable to offence other than the offence falling under clause (d) or clause (e) where the imprisonment is extended to 10 years and with fine which shall not be less than rupees one lakh. Offence falling under clause (d) and (e) carry lesser term of sentence which may extend to one year or alternatively with fine which may extend to rupees ten thousand or with both. C D

9. The words "two years and with fine which shall not be less than twenty five thousand rupees, and" have been substituted by Act 16 of 1997 w.e.f. 3.6.1997 with the expression "ten years and with fine which shall not be less than one lakh and". There is no minimum sentence provided but the outer limit of the punishment is 10 years. At the same time imposition of fine of rupees one lakh is statutorily provided without any exception. E F

10. Considering the peculiar facts of the case we direct reduction of the sentence to 9 months. The amount of fine which is stated to have been deposited is maintained.

11. The appeal is disposed of accordingly. G

K.K.T.

Appeal disposed of