(2010) 04 KL CK 0064

High Court Of Kerala

Case No: Criminal Rev. Petition No. 1008 of 2010

Chembankunnel Ambadi @ Kumaran		APPELLANT
	Vs	
The State of Kerala		RESPONDENT

Date of Decision: April 5, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313(1), 397, 401
- Kerala Abkari Act, 1077 - Section 55

Hon'ble Judges: V. Ramkumar, J

Bench: Single Bench

Advocate: P.K. Priya, for the Appellant; No Appearance, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V. Ramkumar, J.
In this revision filed u/s 397 read with Section 401 Cr.P.C. the petitioner who is the sole accused in S.C. No. 878 of 2004 on the file of the Asst. Sessions Judge, Hosdurg challenges the conviction entered and the sentence passed against him for an offence punishable u/s 55(a) of the Abkari Act.

2. The case of the prosecution is that at about 7.10 p.m. on 20-12-2001 the accused then aged 66 years was found in possession of 2 litres of arrack in a jerry can having a capacity of 2 litres with a glass templer meant for sale at a place called Manikayam in Malom village of Kasaragod District and the accused has thereby committed an offence punishable u/s 55(a) of the Abkari Act.

3. On the accused pleading not guilty to the charge framed against him by the trial court for the aforementioned offence, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 7 witnesses as P.Ws 1 to 7 and got marked 8 documents as Exts. P1to P8 and 3 material objects as

Mos. 1 to 3.

4. After the close of the prosecution evidence, the accused was questioned u/s 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence. He did not adduce any defence evidence when called upon to do so.

5. The learned Assistant Sessions Judge after trial Magistrate, after trial, as per judgment dated 27-1-2007 found the revision petitioner guilty of the and sentenced him to simple imprisonment for three months and to pay fine of Rs. 1,00,000/- and on default to suffer simple imprisonment for three months. On appeal preferred by the revision petitioner as Crl.A. 54 of 2007 before the Sessions Court, Kasaragod, the Addl. Sessions Judge (Adhoc) I, Kasargod as per judgment dated 10-11-2009 dismissed the appeal confirming the conviction entered and the sentence passed against him. Hence, this Revision.

6. Even though the learned Counsel appearing for the revision petitioner assailed on various grounds the conviction entered against the revision petitioner, in as much as the conviction has been recorded by the courts below concurrently after a careful evaluation of the oral and documentary evidence in the case, this Court sitting in revision will be loathe to interfere with the said conviction which is accordingly confirmed.

7. What now survives for consideration is the legality and the extent of the sentence imposed on the revision petitioner. Having regard to the fact that the revision petitioner is now aged 75 years and the quantity of arrack involved is only 2 litres, I am inclined to reduce the sentence of imprisonment and the default sentence as indicated below:

Accordingly, for his conviction u/s 55(a) of the Abkari Act, the revision petitioner is sentenced to rigorous imprisonment for 35 days and to pay fine of Rs. 1,00,000/- and on default to pay the fine to suffer rigorous imprisonment for one month.

In the result, this Revision is disposed of as above.