IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 16TH NOVEMBER 2005 / 25TH KARTHIKA 1927

CRL.A.No. 2151 of 2004(C)

SC.427/2001 of ADDITIONAL SESSIONS COURT (ADHOC)-II, KOLLAM
CP.11/2001 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOTTARAKKARA

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APPELLANT:

MATHEW S/O. PHILIP,
CONVICT NO.7868, CENTRAL PRISON,
THIRUVANANTHAPURAM.

BY ADV. SRI.S.D.ASHOKAN (STATEBRIEF)

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY A
PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SMT.DEEPTHI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16/11/2005, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.HEMA, J.

Crl. Appeal.No.2151 OF 2004 (C)

Dated this the 16th day of November, 2005

J U D G M E N T

This appeal is filed against the conviction and sentence passed against the appellant under Section 8(1) and 8(2) of the Kerala Abkari Act. The appellant was sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.1 lakh under Section 8(2) of the Kerala Abkari Act. In default of payment of fine, he has also ordered to undergo Simple imprisonment for one year.

2. According to the prosecution, on 26.2.2000, at about 6.15 p.m., CW6 and the Police were on patrol duty and on the way, CW6 got information that the appellant was conducting sale of arrack, and accordingly he proceeded to the place of occurrence, which is on the side of the Kavalapacha-Thevannoor road at Cheruval Marayikkottukonam road. The accused was found on the eastern side of a rock which was

lying on the northern side of Kavalapacha-Thevannoor road on the Government purambokke. He was pouring some liquid to a glass and giving it to another person standing nearby. The police approached him while they attempted to ran away. The accused was apprehended and the article which was in his possession in the bottle was seized and examined. It was found to contain arrack. Enquiries were made while he disclosed his identity and at 6.15 p.m., he was arrested from the spot. Some currency notes were also seized from there. Thereafter two bottles containing arrack were seized from the nearby place. On examination it was found that it contain arrack. Those were seized under Ext.P1 mahazer which was attested by PWs.1 and 2.

3. The evidence in this case consists of the oral testimony of PWs.1 to 6, Exts.P1 to P3, MO1 to 3 on the side of the prosecution. Ext.D1, a portion of the statement from the case diary of PW4 was marked on the side of the accused. On an analysis of the evidence adduced in this case, the court below held that the prosecution established possession of arrack by

the accused.

4. The learned counsel appearing for the appellant submitted that there are contradictions in the version given by the witnesses examined in this case. The prosecution examined PWs.1 to 4 and PW6 to prove the incident. PW6 is the detecting Officer. PWs.1 and 2 are attestors to the Mahazar. PWs.3 and 4 are the police constables who witnessed the seizure and who were present in the police party along with CW6. PWs.1 and 2 turned hostile to the prosecution and deposed that they did not see any seizure. But they admitted their signature in Ext.P1 and denied the truth in the contentions. The court below rightly rejected the evidence.

5. However, the evidence of PWs.3, 4 and 6 is consistent with the prosecution case. They deposed that, on 26.6.2000, in the evening they were on patrol duty and the Sub Inspector, CW6 got information about the sale of arrack by the accused, and accordingly they went to the spot on the Kavalapacha - Thevannoor road, and they found the accused holding a bottle,

and on seeing the police, he attempted to run away, but he was taken into custody by CW6. On an examination of the bottle which was in possession of the accused, it was found to contain arrack. The said bottle was seized and the accused was arrested and thereafter it was also found that two bottles were concealed near the place where the accused was found standing. These articles were also seized under Ext.P1 mahazar attested by two independent witnesses. Those witnesses were present at the time of seizure.

6. On going through the evidence of PWs.3, 4 and 6, it can be seen that, they corroborated each other all material particulars, and they gave consistent version regarding the occurrence. They stood the test of cross examination and there is only minor contradiction in their version. All those contradictions were considered by the court below, and those were discarded as minor contradictions. As per the evidence of PW6, PW3 stated that there were two to three persons, whereas PW4 stated that, there were three persons at the scene. PW4 gave evidence that MO3 bottle was not fully filled,

whereas the other witnesses stated that those bottles were fully filled. There were also some contradictions in the evidence of PWs.3, 4 and 5 regarding the time at which they started patrol duty. According to PW, they started the station from 4 p.m. and PW5 stated that, it was on 5 p.m. PW6 said that, they reached the spot at 6 p.m.

7. On an over all appreciation of the evidence of PWs.3, 4 and 6, I find that veracity of their version were not shaken in cross examination. Nothing is brought out to show that they were motivated against the accused to foist a false case against him. Nothing is suggested to any of the witnesses to reveal that they had any reason for falsely foisting a case against the appellant. Though they are official witnesses, there is no rule that their evidence should be discarded for the mere reason that they are officials. I do not find any reason to reject their evidence, especially since the core of the case spoken to by them has not been shaken in cross examination.

8. The finding of the guilt of the accused can only be

sustained. The sentence is only three years rigorous imprisonment and to pay a fine of Rs.1 lakh, and to undergo Simple Imprisonment for one more year in default of payment of fine. The article involved in this case is 3.75 litres of arrack. Considering the gravity of offence, I do not find any ground to interfere with the sentence. Set off is also granted. It was brought to my notice by the learned counsel for the appellant that only 26 days set off is allowed by the court below. But there is mistake in the calculation of the days in custody. I find that the appellant is entitled to set off under Section 428 of the Code of Criminal Procedure for the actual period during which he was under detention. In the above circumstances, sentences are confirmed and set off is allowed for the entire period under Section 428 of the Code of Criminal Procedure.

This Criminal Appeal is dismissed.

K.HEMA, JUDGE

prp

K.HEMA,J

CRL.APPEAL.2151 OF 2004

J U D G M E N T

16th NOVEMBER, 2005