

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 30TH DAY OF OCTOBER 2020 / 8TH KARTHIKA, 1942

CRL.A.No.2192 OF 2005

[AGAINST THE JUDGMENT IN S.C.NO.627 OF 2004 DATED 25.10.2005 ON THE FILE OF THE ADDITIONAL SESSIONS JUDGE/SPECIAL JUDGE FOR NDPS ACT CASES, THODUPUZHA.

APPELLANT/ACCUSED:

UNNI, S/O. KUMARAN,
KOLLIYIL HOUSE, ARAKULAM VILLAGE.

BY ADVS.
SRI.I.V.PRAMOD
SRI.B.VINOD

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1 BY SRI.K.B.UDAYAKUMAR, SR. PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30-10-2020
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 30th day of October 2020

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The appellant is the accused in Sessions Case No.627 of 2004 on the file of Additional Sessions Judge/Special Judge for NDPS Act cases, Thodupuzha.

2. The above case is charge sheeted by the Circle Inspector of Police, Kanjar against the appellant alleging offence punishable under Section 20(b)(1) read with Section 8(c) and 31 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act). The offence under Section 55 (a) of the Kerala Abkari Act and Section 5 of the Explosive Substances Act is also alleged.

3. The prosecution case is that, the accused is the owner of a bunk shop bearing building No.II/308 U.A. which is situated near the gate of Bishop Vayalil Hospital, Moolamatttom. It is alleged that 277 gms of Ganja was found in his shop. It is also alleged that, the appellant kept

Indian made foreign liquor, Eagle XXX Rum in bottles of 375 ml. The further case of the prosecution is that, the appellant was found in possession of explosive substance in his shop. Therefore, it is alleged that, the appellant committed the aforesaid offences.

4. To substantiate the case, the prosecution examined PW1 to PW8. Exhibits P1 to P19 are the documents marked on the side of the prosecution. One witness was examined on the side of the defence as DW1. MO1 to MO6 are the material objects.

5. After going through the evidence and documents, the trial court found that, the accused committed the offence under Section 20(b) and 8(c) of the NDPS Act which is punishable under Section 20(b) (II)A r/w. section 31 of the NDPS Act. He was also found guilty under Section 55(a) of the Abkari Act. The appellant was acquitted under Section 5 of the Explosives Substances Act. The appellant was sentenced to undergo rigorous imprisonment for nine months and to pay a fine of Rs.1,500/- and in

default of payment of fine, he was directed to undergo rigorous imprisonment for one month under Section 20(b)(II)A r/w. Section 31 of the NDPS Act. The appellant was also directed to undergo rigorous imprisonment for three years and to pay a fine of Rs.1 lakh under Section 55(a) of the Abkari Act. In default of payment of fine, the appellant is directed to undergo rigorous imprisonment for one year.

6. Aggrieved by the above conviction and sentence, this criminal appeal is filed.

7. Heard the learned counsel for the appellant and the learned public prosecutor.

8. The learned counsel for the appellant submitted that, even if the entire allegations are accepted, the offence under Section 55(a) of the Abkari Act is not attracted in this case. The counsel submitted that, the Indian Made Foreign Liquor seized from the shop is below one litre. The counsel submitted that, during the relevant time, a person can possess Indian Made Foreign Liquor upto

1.5 litres as per the Abkari Act & Rules. Therefore, even if the prosecution case is accepted, the accused has not committed the offence. The counsel submitted that, there is no evidence to show that, there was any sale of the Indian Made Foreign Liquor by the appellant from the shop. The counsel also submitted that, the offence under Section 20(b)(II)A is also not attracted in this case. The counsel submitted that, the prosecution is not able to prove that, the appellant was in conscious possession of the bunk shop. The counsel submitted that, there is a specific case to the appellant that, one Annakutty was in possession of the bunk shop

9. The learned public prosecutor submitted that, there is oral and documentary evidence to prove the offence. The public prosecutor submitted that, there is nothing to interfere with the conviction and sentence imposed by the trial court.

10. The point for consideration in this appeal is;

i) whether the accused committed the

offence under Section 20(b) (II)A of the NDPS Act;

ii) whether the accused committed the offence under Section 55(a) of the Abkari Act.

11. The prosecution examined altogether 8 witnesses in this case. The prosecution case is that, the contraband article were seized from a building with number II/308 UA of Arakkulam panchayat. The prosecution examined PW6, the Secretary of Grama Panchayat, Arakkulam to show that, the building belongs to the appellant. Exhibit P15 is the certificate produced by PW6. It is true that, the prosecution was able to prove that, the building number II/308 U.A. of Arakkulam panchayat is in the name of the appellant. But, admittedly, the appellant was not present in the bunk shop. According to the prosecution, the appellant was in conscious possession of this contraband article. PW2 is the independent witness who examined by the prosecution. The independent witness clearly stated

that, a lady is usually seen in the bunk shop. So the independent witnesses were declared as hostile. PW3 also deposed that, a lady and the accused were used to be there in the bunk shop. Therefore, there is evidence to probabalise the case of the appellant in this case. As I stated earlier, admittedly, the appellant was not present at the time of alleged seizure. He has got a specific case that even though the shop is in his name, a lady is conducting the shop by name Annakutty. Two independent witnesses examined before the court also deposed that, a lady will be there in the bunk shop usually. The question to be decided is whether the appellant was in conscious possession of the contraband article in this case. As I stated earlier, the appellant was not present in the bunk shop at the time of seizure. The defence case is that another lady is in possession of the bunk shop. That defence is probabalised though the evidence adduced by the two independent witnesses. In such circumstances, the appellant is entitled the benefit of doubt.

Therefore, this criminal appeal is allowed. The conviction and sentence imposed on the appellant as per the judgment dated 25-10-2005 in S.C. No.627 of 2004 on the file of the Additional Sessions Judge/Special Judge for NDPS Act cases, Thodupuzha are set aside. The appellant is set at liberty. Bail bond, if any, executed by the appellant is cancelled.

Sd/-

P.V.KUNHIKRISHNAN

pkk

JUDGE