IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

TUESDAY, THE 19TH DAY OF MAY 2026 / 29TH VAISAKHA, 1948

CRL.REV.PET NO. 522 OF 2017

CRIME NO.42/2009 OF HOSDURG EXCISE RANGE OFFICE, KASARGOD

AGAINST THE JUDGMENT DATED 27.02.2017 IN CRL.A NO.275 OF 2015 OF SESSIONS COURT, KASARAGOD, ARISING OUT OF THE JUDGMENT DATED 31.10.2015 IN SC NO.97 OF 2011 OF ASSISTANT SESSIONS COURT, HOSDRUG

REVISION PETITIONER/APPELLANT/ACCUSED:

A.RAJU
AGED 58 YEARS, S/O.ACHUTHAN,
R/AT MOOLAKANDAM, AJANUR VILLAGE,
HOSDURG TALUK, P.O.AANANDASHRAM,
KASARAGOD DISTRICT

BY ADVS.
SHRI.K.P.HARISH
SMT.ANITHA MATHAI MUTHIRENTHY
SRI.JACKSON JOHNY

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031

BY ADV.G. SUDHEER, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19.05.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R."

JOBIN SEBASTIAN, J.

Crl.R.P. No. 522 of 2017

Dated this the 19th day of May, 2026

ORDER

This criminal revision petition has been filed under Sections 397 and 401 of the Code of Criminal Procedure, challenging the judgment of conviction and the order of sentence passed against the revision petitioner for the offence punishable under Section 8(2) r/w 8(1) of the Abkari Act by the Assistant Sessions Court, Hosdurg, as per judgment dated 31.10.2015 in S.C. No.97/2011, which was subsequently confirmed in appeal by the Sessions Court, Kasaragod, by judgment dated 27.02.2017 in Crl. Appeal No.275/2015. The revision petitioner is the sole accused in the said case.

2. The prosecution case, in brief, is that on 26.09.2009, at about 2.30 p.m., the accused was found in possession of 4 litres of illicit arrack in contravention of the provisions of the Abkari Act and thereby committed the offence punishable under Section 8(2) r/w 8(1) of the Abkari Act.

3. During trial, the prosecution examined PW1 to PW3 and marked

Exts.P1 to P12. After the closure of the prosecution evidence, the accused was questioned under Section 313 of the Cr.P.C., during which he denied all the incriminating circumstances brought out against him in evidence. As the court found that it was not a fit case for acquittal under Section 232 of the Cr.P.C., the accused was called upon to enter upon his defence and adduce evidence, if any, in support thereof. However, no defence evidence was adduced.

4. After hearing both sides, the learned Assistant Sessions Judge found the accused guilty of the offence punishable under Section 8(2) r/w 8(1) of the Abkari Act and convicted him accordingly. The accused was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,00,000/-. In default of payment of fine, he was directed to undergo rigorous imprisonment for a further period of six months.

5. Aggrieved by the conviction and sentence, the accused preferred Criminal Appeal No.275/2015 before the Sessions Court, Kasaragod. The learned Sessions Judge, upon hearing the appeal, confirmed the findings and sentence passed by the trial court. Impugning the said judgment, the accused has filed this revision petition.

6. Heard Sri. K. P. Harish, the learned counsel appearing for the revision petitioner, and Sri. G. Sudheer, the learned Public Prosecutor. The records

were also perused.

7. The learned counsel for the revision petitioner contended that both the trial court and the appellate court failed to appreciate the facts and evidence on record properly and proceeded to convict the accused mechanically. According to the learned counsel, the procedures relating to search, seizure, and sampling were not carried out in strict compliance with law and such procedural lapses themselves are sufficient to vitiate the prosecution case. It was further submitted that, although the residue of the arrack, after drawing the sample, was allegedly disposed of upon preparation of an inventory, the correctness of the said inventory was not properly certified by the Magistrate, thereby rendering the prosecution case doubtful.

8. Per contra, the learned Public Prosecutor submitted that the procedures relating to seizure, sampling, and sealing were carried out scrupulously and that there is no room for any doubt or suspicion regarding the identity of the contraband seized or the sample that ultimately reached the chemical examiner. According to the learned Public Prosecutor, sufficient link evidence has been adduced to establish the chain of custody of the sample and, therefore, no interference with the concurrent findings of the trial court and the appellate court is warranted.

9. This is a case in which 4 litres of arrack was allegedly seized from the possession of the accused. The records reveal that the accused was allegedly caught red-handed while in possession of the contraband. In order to establish the charge against the accused, the prosecution examined altogether three witnesses as PW1 to PW3. Among them, the prosecution mainly relied upon the evidence of PW1, the detecting officer who is none other than the Excise Inspector of the Hosdurg Excise Range. PW1, on examination before the court, narrated the entire sequence of events that transpired in this case. He also gave a detailed account of the procedures adopted for the search, seizure, and sampling of the contraband. His evidence further reveals that representative samples were drawn from the arrack at the place of detection itself.

10. A perusal of the contemporaneous records prepared at the time of detection reveals that the specimen impression of the seal used for sealing the sample bottle was affixed in the seizure mahazar. Likewise, the specimen seal was also provided in the forwarding note along with which the sample was forwarded for chemical examination.

11. Notably, in the chemical examination report marked as Ext.P12, it is specifically stated that the seal affixed on the sample bottle was compared with the specimen seal provided in the forwarding note and that both were found

tallying. Therefore, it is evident that the prosecution has succeeded in adducing sufficient link evidence to establish that the sample drawn from the spot was the very same sample that ultimately reached the hands of the chemical examiner for analysis.

12. However, according to the prosecution itself, after drawing the sample, the residue of the arrack was disposed of in compliance with the procedure prescribed under Section 53A of the Abkari Act. The inventory allegedly prepared before the destruction of the residue is marked as Ext.P8. A perusal of Ext.P8 reveals that neither the signature nor the seal of the Magistrate, who is stated to have certified the correctness of the inventory prepared by the Authorized Officer, is seen affixed therein.

13. Under Section 53A(2) of the Abkari Act, after preparing the inventory, the Authorized Officer is required to make an application before the Magistrate having jurisdiction over the area where the seized liquor, intoxicating drug, or articles are stored for the purpose of: (a) certifying the correctness of the inventory so prepared; or (b) taking, in the presence of such Magistrate, photographs of such liquor, intoxicating drug, or article and certifying such photographs as true; or (c) allowing to draw representative samples of such liquor, intoxicating drug, or articles in the presence of such

Magistrate and certifying the correctness of any list of samples so drawn. Sub-section (3) further mandates that, upon such application, the Magistrate shall, as soon as may be, visit the place where such liquor, intoxicating drug, or articles are stored and take appropriate steps as specified in clauses (a), (b), and (c) of sub-section (2).

14. In the present case, as rightly pointed out by the learned counsel for the revision petitioner, the mandatory procedures contemplated under Section 53A of the Abkari Act were not strictly complied with, inasmuch as the signature or seal of the Magistrate, who allegedly certified the correctness of the inventory, is absent in Ext.P8. The act of certifying an inventory under Section 53A of the Abkari Act is not an empty formality, especially since such inventory is treated as primary evidence in an Abkari case. Therefore, while certifying the inventory, the Magistrate is expected to exercise due care and caution, bearing in mind that the document so certified would assume the character of primary evidence during trial. The Magistrate must satisfy himself regarding the correctness of the particulars and description of the property contained in the inventory before certifying the same.

15. In the present case, a bare perusal of Ext.P8 reveals that there is nothing to indicate that the Magistrate had verified and certified the correctness

of the inventory, particularly when neither the signature nor the seal of the Magistrate is found in such a crucial document. When the procedure prescribed under Section 53A of the Abkari Act is not strictly complied with, and when the residue of the contraband after drawing sample is not produced before the court, coupled with the absence of satisfactory evidence regarding its lawful destruction or disposal, the very seizure of the contraband becomes doubtful. In such circumstances, the accused is entitled to the benefit of doubt.

In the result, the criminal revision petition is allowed. The judgment of conviction and the order of sentence passed against the revision petitioner/accused for the offence punishable under Section 8(2) r/w 8(1) of the Abkari Act are set aside, and the accused is acquitted of the said offence. The fine amount, if any, deposited by the revision petitioner/accused shall be refunded to him in accordance with law.

Sd/-

JOBIN SEBASTIAN
JUDGE

SPV