

Gopalakrishnan Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/36120

Court : Kerala

Decided On : Jan-29-2015

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Gopalakrishnan

Respondent : State of Kerala

Judgement :

"CR" IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN THURSDAY, THE 29^H DAY OF JANUARY 2015 9TH MAGHA, 1936 Crl.Rev.Pet.No. 1446 of 2014 ()
----- AGAINST THE

JUDGMENT

IN SC3792008 of ASST.SESIONS COURT, ALAPPUZHA DATED 22-07-2011
AGAINST THE

ORDER

IN CP12008 of J.M.F.C.-II, HARIPAD AGAINST THE

JUDGMENT

IN CRA3972011 of ADDL.SESIONS COURT, ALAPPUZHA. DATED 24-03-2014
CRIME NO. 96/2004 OF KARTHIKAPPALLY EXCISE RANGE OFFICE,
ALAPPUZHA REVISION PETITIONER/APPELLANT/ACCUSED:
----- GOPALAKRISHNAN, AGED 50 YEARS,

S/O.SUKUMARAN, SANTHIBHAVANAM, AYIKKATTUMoola MURI CHIGOLI
VILLAGE, ALAPPUZHA DISTRICT. BY ADVS.SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN SMT.T.J.SEEMA

RESPONDENT/RESPONDENT/COMPLAINANT: -----

STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SRI. N.
SURESH THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON161.2015, THE COURT ON2901-2015 PASSED THE
FOLLOWING: "CR" K. RAMAKRISHNAN, J.

..... CrI.R.P.No.1446 of 2014
..... Dated this the 29th day of January, 2015.

ORDER

The accused in SC.No.379/2008 on the file of the Assistant Sessions Court, Alappuzha is the revision petitioner herein. The revision petitioner was charge sheeted by the Excise Inspector Karthikappally excise range alleging the offences under sections 55 (a), (b) and (g) and sections 8(1) and (2) of the Abkari Act.

2. The case of the prosecution in nutshell was that on 11.8.2004 at about 10 p.m the revision petitioner was found engaged in manufacture of arrack at Santhi Bhavan in Chingoli panchayat in violation of the provisions of the Abkari Act and for that purpose he was found to be in possession of 4 litres of arrack and 35 litres of wash and implements used for manufacture of arrack and thereby he had committed the offences punishable under sections 8(1) read with 8 (2) and 55 (a), (b) and (g) of the Abkari Act.

3. After investigation, final report was filed before the Judicial First Class Magistrate Court-II, Haripad and the learned CrI.R.P.No.1446 of 2014 2 Magistrate has taken cognizance of the case as C.P.No.1/2008 and committed to the Sessions Court, Alappuzha and after committal, the Sessions Judge took cognizance of the case as S.C.No.379/2008 and it was made over to Assistant Sessions Court, Alappuzha for disposal.

4. When the accused/revision petitioner appeared before the court below, after hearing both sides, the learned Assistant Sessions Judge framed charge under sections 8(1) and (2) and 55(a), (b) and (g) of the Abkari Act against the revision petitioner and the same was read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, Pws 1 to 5 were examined and Exts.P1 to P9 and Mos 1 to 6 were marked on their side and after closure of the prosecution evidence, the revision petitioner was questioned under section 313 of the Code and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that he had not committed any offence and he has been falsely implicated in the case. He was arrested by the excise officials while he was returning home after his work and the articles taken from the canal adjacent to his house were used to falsely implicate him in this case. Since Crl.R.P.No.1446 of 2014 3 the evidence in this case did not warrant acquittal under section 232 of the Code, the revision petitioner was directed to enter on his defence, but no defence evidence was adduced on his side. After considering the evidence on record, the court below found the revision petitioner guilty under sections 55 (a), (b) and (g) and 8(1) and (2) of the Abkari Act and convicted him there under but sentenced him to undergo rigorous imprisonment for one year and also to pay a fine of Rs. One lakh, in default to undergo simple imprisonment for two months under Section 55 (b) of the Act as under section 71 of the Indian Penal Code the entire offence was committed as part of the same transaction and that will fall under section 55 (b) of the Abkari Act. Set off was allowed for the period of detention already undergone by him in this case.

5. Dissatisfied with the same, the revision petitioner filed Crl.A.No.397/2011 before the Sessions Court, Alappuzha and the same was made over to Additional Sessions Court, Alappuzha for disposal and the learned Additional Sessions Judge dismissed the appeal confirming the order of conviction and sentence passed by the court below. Dissatisfied with the same, the present revision has been filed by the revision petitioner/accused Crl.R.P.No.1446 of 2014 4 before the court below.

6. Since this Court has already suspended the sentence even before admitting the revision, this Court felt that the revision can be admitted, heard and disposed of on merits. Earlier, judgment was dictated in the open court. But, later it was found that a specific question was raised regarding the legality of invoking section 71 of the Indian Penal Code in this case by brother Judge while considering the question of admission, this Court felt that it has to be heard in detail as in case this Court found that the revision petitioner is not entitled for the benefit under section 71 of the Indian Penal Code, enhancement of sentence has to be made and that cannot be decided without hearing the revision petitioner. So it was re-opened and posted for spoken to.

7. Heard the counsel for the revision petitioner and the learned Public Prosecutor again and Sri. S. Rajeev was directed to help this Court on this aspect as amicus curiae and heard learned counsel Sri.S. Rajeev also.

8. The counsel for the revision petitioner submitted that the evidence adduced on the side of the prosecution is not sufficient to prove that he is the owner of the house. There is Crl.R.P.No.1446 of 2014 5 change in the house number in the seizure mahazer and in the certificate produced. In the seizure mahazer, the house number was shown as V/124, whereas in the certificate issued it was shown as III/235. There is no evidence to show that both the house are the same. This aspect has not been properly appreciated by the courts below. Further the independent witnesses were not the persons from the same place and they did not support the case of the prosecution. When house search was conducted, the excise officials were bound to comply with section 100 of the Code and they had to call two local respectable persons for the purpose of conducting house search. That was not done in this case. So the search is vitiated. No investigation was conducted as to whether there were any other persons residing in the house as well. He cannot be said to be in exclusive control of the house so as to make him alone liable for the alleged offence, if any said to have been committed or if any proved on the basis of the evidence adduced. So he prayed for acquittal of the revision petitioner.

9. On the other hand, the learned Public Prosecutor submitted that the evidence adduced on the side of the prosecution proved guilt of the revision petitioner beyond CrI.R.P.No.1446 of 2014 6 reasonable doubt. He was caught red handed while engaged in manufacture of arrack and so change of house or ownership of the house etc are not relevant for the purpose of considering the case and that alone is not sufficient to grant order of acquittal in favour of the revision petitioner especially when both the courts below had concurrently found him guilty, on facts, for the offence alleged.

10. The case of the prosecution as emerged from the prosecution witnesses was as follows: On 11.8.2004 at about 10 p.m, while PW1 along with PW4 and others were doing night patrol duty and when they reached near Gurumandiram, they got information that the revision petitioner, who was residing in Santhi Bhavan, was in possession of arrack and immediately he prepared Ext.P7 search memo and sent the same to the court and thereafter went to the place and conducted search of the house in the presence of PW3 and another and found the revision petitioner engaged in manufacture of arrack by keeping the materials and vessels on the oven which contained wash, a material used for manufacture of arrack, from the kitchen of that house and on verification of the vessels, it contained 35 litres of wash and 4 litres of CrI.R.P.No.1446 of 2014 7 illegally manufactured arrack was also found in MO6 kannas. He had taken sample from the wash and arrack and sealed and labelled the same as per Rules and obtained signatures of the witnesses, revision petitioner and he also put his signature on the same and thereafter destroyed the remaining wash as per Rules. He had sealed the kannas in which the arrack was found and seized Mos 1 to 6, vessels, implements etc after describing the same in Ext.P3 search list and including samples as per Ext.P4 seizure mahazer. He arrested the revision petitioner and prepared Ext.P1 arrest memo and intimated the same to his relative as per Ext.P2 intimation letter. Thereafter he came to the excise office and registered Ext.P5 occurrence report as CR.No.96/2004 of Karthikappally excise range under sections 8(1) and (2) and 55 (a), (b) and (g) of the Abkari Act. He prepared Ext.P6 thondi list and produced the revision petitioner and the thondi articles before the court along with remand report and the thondi list on the next day itself. Investigation was conducted by PW5, the Excise Inspector. As per the request and the forwarding note received

from the investigating officer, the samples were sent for chemical analysis and Ext.P9 Chemical Analysis Report obtained Crl.R.P.No.1446 of 2014 8 in which it was mentioned that the samples contained ethyl alcohol. He obtained the certificate of ownership of the house from the grama panchayat. He completed the investigation and submitted final report before court.

11. PW3 is an independent witness examined on the side of the prosecution to prove the seizure, search and the arrest of the revision petitioner. Since he did not support seizure, he was declared hostile. He had admitted that he knew the revision petitioner. So possibility of the witness supporting the revision petitioner cannot be ruled out. Then the remaining evidence available to prove the detection was that of Pws 1 and 4, the detecting officer and the officer who accompanied him. PW1 had deposed that on that day when he was doing night patrol duty along with PW4 and others and when they reached Gurumandiram in Chingoli panchayat, he got information that the revision petitioner was in possession of arrack in the house by name Santhi Bhavan and immediately he prepared Ext.P7 search memorandum and sent it to court and thereafter went to the place and saw the revision petitioner engaged in distillation of arrack by placing vessels and materials in a gas stove from the kitchen of that house. He had taken Crl.R.P.No.1446 of 2014 9 sample and seized the articles after sealing, labelling and describing the same in the search list and seizure mahazer. He denied the suggestion that no article was seized from the possession of the revision petitioner but he was arrested while he was returning home and using the articles seized from the side of canal, he has been falsely implicated in the case. PW4 an officer who accompanied PW1 also corroborated the evidence of PW1 regarding the aspect of conducting search, seizure and arrest of the revision petitioner. Though Pws 1 and 4 were cross examined at length, nothing was brought out to discredit their evidence on this aspect. Except giving suggestion to Pws 1 and 4 that he has been falsely implicated, no reason was stated for such false implication of the revision petitioner by the excise officials in a case like this. So under the circumstances, it cannot be said that the revision petitioner has been falsely implicated in the case as contended by him. It is also settled law that merely because the independent witnesses to the seizure turned hostile is not a ground for disbelieving the case of the prosecution regarding seizure. The court can rely

on the evidence of official witnesses if the court is satisfied with their evidence. So under the circumstances Crl.R.P.No.1446 of 2014 10 and also on the basis of the evidence available on record, it cannot be said that the suggestion given by the revision petitioner that he has been falsely implicated has been established as claimed by the counsel for the revision petitioner and there is nothing to disbelieve the evidence of Pws 1 and 4 regarding the search, seizure and arrest of the revision petitioner along with the contraband articles while he was engaged in distillation of the same.

12. It is true that in the search list and in the search memo, the house number was not mentioned. But the house name was shown as Santhi Bhavan and the name of the revision petitioner was also mentioned. But in the seizure mahazer, the house name was shown as Santhi Bhavan and house number was shown as V/124 in Chingoli grama panchayat. But in the certificate produced by the Secretary, the house number was shown as III/235 and PW2 had stated that he has not issued the certificate. So the document was not marked in evidence. Since it was not marked and no attempt was made on the side of the revision petitioner to mark the same as his document at least, it cannot be said that there is evidence before court to prove the discrepancy in the house number. The revision Crl.R.P.No.1446 of 2014 11 petitioner had not produced any document to prove that he has no connection with the house and he was residing in a different house also. Further the discrepancy in the house number may have some relevancy if search was conducted and contraband articles were seized in the absence of the revision petitioner from the house or seizure was effected when it was kept in the some portion of the house and not from the possession of the revision petitioner. But that was not the case here. It was a case where the revision petitioner was caught red handed by the excise officials while he was engaged in distillation of arrack from the kitchen of the house by name Santhi Bhavan. There is no dispute regarding the fact that name of the house was Santhi Bhavan. Further the incident occurred at 10 p.m. So one cannot expect independent local witnesses will be available for conducting the search as contended by the counsel for the revision petitioner. Further there is nothing wrong for getting two independent reliable witnesses by the leading party along with them during night for conducting search as it cannot be expected that independent local witnesses to be available at that

time at that place. Further section 36 of the Abkari Act only says that procedure for search has to be CrI.R.P.No.1446 of 2014 12 followed as far as possible as mentioned in the Code. So it is only obligatory on the part of the excise officials to follow the procedure for search and seizure as provided in the Code and non compliance of the same alone is not sufficient to disbelieve the case of the prosecution. So even assuming that there was some discrepancy in the house number that alone is not sufficient to disbelieve the case of the prosecution especially when the revision petitioner was arrested by the excise officials while he was engaged in manufacture of arrack from that building. So under the circumstances the courts below were perfectly justified in coming to the conclusion that the prosecution has proved beyond reasonable doubt that the revision petitioner was found engaged in manufacture of arrack and he was arrested by them when he was engaged in distillation of arrack and rightly convicted him for the offence under sections 55 (b) and (g) of the Abkari Act and the concurrent findings of the court below on this aspect do not call for any interference. Since possession of arrack was now deleted from section 55(a) and new section has been incorporated as section 8, the conviction entered under section 55(a) is not proper and the same is converted under sections 8(1) and (2) of CrI.R.P.No.1446 of 2014 13 the Abkari Act. So the revision petitioner is convicted under section 8(1) read with section 8(2) of the Abkari Act in stead of section 55(a) of the Abkari Act as done by the trial court and confirmed by the appellate court as no prejudice will be caused on account of the same as charge has been framed for the offence under sections 8(1) and (2) of the Abkari Act as well.

13. As regards the sentence is concerned, the court below had sentenced the revision petitioner for the offence under section 55(b) of the Abkari Act though he was found guilty for the offence under sections 55 (a), (b) and (g) of the Abkari Act invoking section 71 of the Indian Penal Code. This was confirmed by the appellate court also. No appeal has been preferred by the State against this aspect. Being a revision, this can be considered by this Court. But if the court feels that separate sentence will have to be imposed and this will amount to enhancement of sentence and then an opportunity has to be given to the revision petitioner on this aspect. So, the revision petitioner and the amicus curiae appointed by this Court, Sri. S. Rajeev and Public Prosecutor were heard on this aspect after posting the

case as spoken to in the open court. Crl.R.P.No.1446 of 2014 14 14. The counsel for the revision petitioner submitted that though if it is considered that each of the acts amount to independent offence, but the main allegation was that he was engaged in distillation of arrack and for that purpose he was in possession of certain prohibited articles, possession of which itself may be an independent offence under the Code. It can only be treated as an offence committed in the same transaction and he can be punished for any one of the offence and the aggregate punishment should not exceed the maximum punishment provided for the grave offence. So under the circumstances, the court below was perfectly justified in sentencing him for the offence under section 55 (b) of the Abkari Act.

15. Sri. S. Rajeev, the learned amicus curiae submitted that this Court in Crl.R.P.No.793/2002 (Arumughan v. State of Kerala) confirmed the similar sentence provided in a similar set of facts in another case and also in the decision reported in Pujamal Awadayappa v. State of Bombay (AIR1951 Bom. 244) while considering the similar offence under the Bombay Prohibition Act, the Bombay High Court though found the accused guilty for several offences, punishment was Crl.R.P.No.1446 of 2014 15 imposed only for one offence namely manufacture of arrack which falls under section 43 (b) of that Act though he was found guilty for the offence under sections 43 (a), (b) and (h) of the Bombay Prohibition Act, which are similar to sections 55 (b), (g) and 8 (1) and (2) of the Abkari Act invoking section 71 of the Indian Penal Code. He had also relied on the decisions reported in Udai Bhan v. State of U.P (1962 KHC547 and Navo Vision Electronics Pvt. Ltd. & another (M/s) v. State and another (2011 KHC6125 and Udai Bhan v. State of U.P (AIR 1962 SC1116:

1962. Suppl(2) SCR830 for the proposition that in cases where distinct and separate offences were committed in the same course of the same transaction, then for both offences separate sentence can be imposed and section 71 of the Indian Penal Code cannot be invoked.

16. The learned Public Prosecutor, on the other hand, submitted that when each one of the offences are independent and distinct offences, the court below is bound to award separate sentences for each offence.

17. Sections 55 and 8(1) and (2) of the Abkari Act reads as follows: Section 55. For illegal import, etc:- Whoever in CrI.R.P.No.1446 of 2014 16 contravention of this Act or of any rule or order made under this Act. (a) imports, exports, [transports, transits or possesses] liquor or any intoxicating drug; or (b) Manufactures liquor or any intoxicating drug; [(c) x x x] (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 (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 [(h) bottles any liquor for purposes of sale; or] [(i) [Sells or stores for sales liquor] or any intoxicating drug;] [shall be punished.-] Section 8[(1) Prohibition of manufacture, import, export, transport, transit, possession, storage, sales, etc., of arrack:- No person shall manufacture, import export [without permit transit] possess, store, distribute, bottle or sell arrack in any form.] CrI.R.P.No.1446 of 2014 17 [(2) If any person contravenes any provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to ten years and with fine which shall not be less than one lakh.] Section 55 (b) deals with manufacture of liquor or any intoxicating drug. Section 55 (g) deals with uses 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. Section 8(1) of the Abkari Act prohibits possession of arrack and punishment provided under section 8(2)of the Act.

18. Section 71 of the Indian Penal Code reads as follows:

71. Limit of punishment of offence made up of several offences:- Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided. [Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, CrI.R.P.No.1446 of 2014 18 the offender shall

not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.] 19. Section 31 of the Code of Criminal Procedure deals with sentence in cases of conviction of several offences at one trial, which reads as follows:

31. Sentence in cases of conviction of several offences at one trial:- (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently. (2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court. CrI.R.P.No.1446 of 2014 19 Provided that- (a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years; (b) the aggregate punishment shall not exceed twice the amount of punishment which the court is competent to inflict for a single offence. (3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

20. Section 71 of the Indian Penal Code says that if the conduct of the offence consists of several acts and each one of the act may amount to independent offence, the offender shall not be punished with imprisonment for more than one set of his offence unless it is expressly so provided. The second part of section 71 says that if it falls under two or more separate definitions and when several acts of which one or more than one by itself or themselves constitute an offence constituted when par with a different offence, the offender shall not be punished with more severe punishment than the court which tries him could award for any one of such offence. CrI.R.P.No.1446 of 2014 20 21. In the decision reported in *Udai Bhan v. The State of Uttar Pradesh* (AIR 1962 SC1116 the Hon'ble Supreme Court while considering the question as to whether if the accused had committed

the offence under section 457 and 380 of the Indian Penal Code (criminal trespass and theft), the Supreme Court has held that they are independent offences and they will not fall under section 71 of the Code and conviction and imposing sentence under both sections was not illegal.

22. The same view has been reiterated in an unreported decision in State rep. by Inspector of Police, Pudukottai, Tamil Nadu v. A. Parthiban (2006 (11) SCC473, the Hon'ble Supreme Court while considering the offence under sections 7 and 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act, the Hon'ble Supreme Court has held that convicting the accused for the offence under sections 7 and 13 (1) (d) read with section 13(2) of the said Act and providing separate sentence is not hit by section 71 of the Indian Penal Code. The Hon'ble Supreme court has also relied on section 220 of the Code for this purpose which reads as follows: CrI.R.P.No.1446 of 2014 21 220. Trial for more than one offence:- (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence. (2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of section 212 or in sub-section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence. (3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences. (4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, or such acts. (5) Nothing contained in this section shall affect section CrI.R.P.No.1446 of 2014 22 71 of the Indian Penal Code (45 of 1860) and then held that providing separate sentence is not barred under section 71 of the Indian Penal Code.

23. In the decision reported in Nova Vision Electronics Pvt.Ltd.& another (M/s) v. State & another (2011 KHC6125, the Delhi High Court while considering the question of imposing sentence for the offence under section 138 of the Negotiable Instruments Act where joint trial was allowed in respect of several cases filed against the same accused between the same parties in respect of several cheques issued, the Delhi High Court has held that section 71 of the Indian Penal Code will not be attracted in such case as each offence is an independent offence. In the decision reported in Puranmal Agarwalla v. State of Orissa (1958 KHC507, the Hon'ble Supreme Court while considering the question of possession and transport of opium under sections 4 and 9 of the Opium Act, has observed that they are independent offences and section 71 is not applicable in such cases.

24. It is true that in the decision reported in Pujamal Awadayappa v. State of Bombay (AIR1951 Bombay 244) in a similar case where the accused was arrested while engaged CrI.R.P.No.1446 of 2014 23 in manufacture of liquor in violation of the provisions of the Bombay Prohibition Act, though he was convicted for the offence under section 65(b) for manufacture of liquor, 65(a) for possessing liquor and 65(f) for possessing material and apparatus for the manufacture of liquor invoking the power under section 71 of the Indian Penal Code, the Bombay High Court confirmed the sentence under section 65 (b) alone for manufacture of liquor relying on several decisions of that court on this aspect. But the Bombay High Court did not consider the difference of opinion on this aspect by several other High Courts.

25. It is true that in an unreported decision of this Court in CrI.R.P.No.793/2002 in Arumughan V. State of Kerala, this Court has confirmed the sentence imposed by the trial court for the offence under section 55(b) of the Abkari Act alone though he was found guilty for the offence under section 55 (g) and (a) of the Abkari Act. But no principle or decision has been cited therein and no ratio has been laid down in that decision on that question independently.

26. In view of the fact that when there are several acts constitute an offence and any one of the same act will CrI.R.P.No.1446 of 2014 24 independently constitute an offence and separate sentences have been provided for each of the offences

and considering the gravity of the offence unless a specific provision is provided under the Abkari Act for consolidation of such sentence, this Court feels that it is not proper to invoke section 71 of the Indian Penal Code in such cases especially when each offence has been independently defined and each act has been found to be an independent offence for which independent punishment has been provided as well. Further in view of the dictum laid down in the decisions of the Hon'ble Supreme Court on various enactments of similar nature where possession and transport of opium was found to be independent offence though he was found to be in possession of opium and while was carrying the same he was arrested and in spite of that the Supreme Court has held that each will be independent and distinct offence and section 71 will not be attracted in such cases, I am not inclined to agree with the view taken by the Bombay High Court on this aspect. So under the circumstances, the sentence imposed by the court below for the offence under section 55 (b) of the Act alone though he was found guilty under section 55 (g) and (h) and section 8(1) and (2) of the CrI.R.P.No.1446 of 2014 25 Abkari Act (wrongly under section 55(a) of the Abkari Act and has been converted as sections 8(1) and (2) of the Abkari Act) is illegal and the same is liable to be set aside and separate sentences have to be imposed for each offence. Considering the fact that the accused was only 47 years and he had not involved in any other case and he was not a habitual offender, this Court feels that some leniency can be shown in imposing the sentence. The submission made by Sri.S. Rajeev, the amicus curiae appointed, that maximum fine of Rs. One lakh alone can be imposed though separate substantive sentence can be imposed for each offences is also without any substance because there is no limit provided for the fine but a minimum was provided as Rs.One lakh. So for each offence, minimum sentence of Rs. One lakh fine has to be imposed. So the sentence is modified as follows: The revision petitioner is sentenced to undergo simple imprisonment for six months and also to pay a fine of Rs. One lakh, in default to undergo simple imprisonment for two months under section 55(b) of the Abkari Act and further sentenced to undergo simple imprisonment for six months and also to pay a fine of Rs.One lakh, in default to undergo simple imprisonment CrI.R.P.No.1446 of 2014 26 for two months under section 55 (g) of the Abkari Act and further sentenced to undergo simple imprisonment for six months and also to pay a fine of Rs.One lakh, in

default to undergo simple imprisonment for two months more under section 8(1) read with section 8(2) of the Abkari Act and directed the substantive sentences to be run concurrently. Set off was also allowed for the period of detention already undergone by him as an under trial prisoner. With the above modifications of the sentence alone, the revision petition is disposed of accordingly. I place on record the appreciation for Sri.S. Rajeev, Advocate, the amicus curiae appointed for arguing the case and helping the Court to decide the issue effectively. Office is directed to communicate this order to the concerned court immediately. Sd/- K. RAMAKRISHNAN, JUDGE. cl /true copy/ P.S to Judge CrI.R.P.No.1446 of 2014
27

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