

**Mathai John Vs. State of Kerala**

**Mathai John Vs. State of Kerala**

**SooperKanoon Citation :** [sooperkanoon.com/723355](http://sooperkanoon.com/723355)

**Court :** Kerala

**Decided On :** Nov-16-1977

**Reported in :** 1978CriLJ742

**Judge :** Ku. P. Janaki Amma, J.

**Appellant :** Mathai John

**Respondent :** State of Kerala

**Judgement :**

ORDER

**Ku. P. Janaki Amma, J.**

1. The petitioner is the accused in C. C. 198 of 1975 on the file of the Sub-Divisional Magistrate, Adoor. He was convicted for offences punishable Under Sections 55 (a), (b) and (g) of the Kerala Abkari Act and was sentenced to undergo simple imprisonment for six months and to pay a fine of Rs. 1000/- Under Section 55 (b). In default of payment of fine, he is to undergo simple imprisonment for a further period of two months. Separate sentences were not awarded under Sections 55 (a) and (g) of the Act. The petitioner filed an appeal before the Sessions Judge, Quilon. The conviction and sentence were confirmed in appeal. The revision petition is filed challenging the conviction and sentence.

2. The defence set up before the trial court and the appellate court was one of denial of the incident. An alternate contention was also raised that there is no sufficient material in the case to show that the building wherein the articles were found was in the possession of the petitioner. The courts below overruled the contention and held that on the evidence, it was clearly established that the petitioner did the acts alleged against him and that the building was owned by him and was in his possession. There are no proper reasons to interfere with the findings of fact based on appreciation of evidence,

3. The only plea put forward on behalf of the petitioner is that being a first offender, he may be released on probation of good conduct. The prayer is opposed. One of the objections raised on behalf of the State is based on the fact that Section 55 of the Abkari Act prescribes a minimum sentence of imprisonment. This objection has no force. The Probation of Offenders Act does not exclude from the operation offences for which a minimum sentence of imprisonment is fixed. Only offences punishable with death or imprisonment for life and those Under Section 5(2) of the Prevention of Corruption Act have been exempted from the operation of the Probation of Offenders Act. A similar objection was raised in connection with the Prevention of Food Adulteration Act and the Supreme Court in *Isher Das v. State of Punjab* : 1972 CriLJ874 overruled the contention.

4. This does not, however, mean that the provisions of the Probation of Offenders Act should be applied to all cases arising under the Abkari Act. Like adulteration of food, illicit manufacture of liquor is also an offence which has an adverse impact on society and on the economy of the State. Prohibition of the consumption of intoxicating liquor except for medicinal purpose is included in the Directive Principles of State Policy as will be seen from Article 47 of the Constitution. A deliberate and calculated move to defy the provisions of the Abkari and Excise law prompted by profit making: motive does not deserve sympathetic consideration. The salutary provisions contained in the Probation of Offenders Act may not serve their purpose by indiscriminate application of its provision. The fact that a minimum term of imprisonment is fixed for a particular offence itself reveals the gravity of the offence. The provision reflects the social abhorrence towards the offence and the intention of the Legislature that offences of the kind should be stopped with a stern

hand. While there is no prohibition in applying the principles of probation even in cases above referred to, it requires much circumspection in actual application to cases other than those coming Under Section 6 of the Probation of Offenders Act. In the instant case, the evidence shows that the petitioner was caught red-handed in the process of manufacture. There were utensils specially designed for manufacture of liquor. Large quantities of wash and liquor were taken into custody. From the materials available, it is evident that the person is not a casual offender and that it was not the first time that he was committing the act. Such a person does not deserve release on probation of good conduct. In cases like that of the petitioner, the denunciation of the anti-social act can only be brought home by sentencing the offender with the punishment fixed under the Act. The trial court and the appellate court, therefore, rightly convicted the petitioner and sentenced him to a term of imprisonment and fine. No interference is called for. The revision petition is accordingly dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**