

Mary Vs. State of Kerala

Mary Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/727721

Court : Kerala

Decided On : Aug-22-2005

Reported in : 2005(4)KLT39

Judge : K. Padmanabhan Nair and; V. Ramkumar, JJ.

Acts : Abkari Act, 1077 - Sections 3, 53, 55 and 58; [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 2, 8, 20, 36, 36A, 42, 67 and 81; [Dangerous Drugs Act, 1930](#) - Sections 2; Code of Criminal Procedure (CrPC) - Sections 313 and 428; Abkari (Amendment) Act, 1996

Appeal No. : Crl.R.P. No. 1110 of 1995

Appellant : Mary

Respondent : State of Kerala

Advocate for Def. : Sujith Mathew Jose, Public Prosecutor

Advocate for Pet/Ap. : M.K. Damodaran, Sr. Adv. and; Sojan, Adv.

Disposition : Crl. R.P. dismissed

Judgement :

ORDER

V. Ramkumar, J.

1. This revision has come up before us upon a reference by a learned Single Judge (Sri. Sasidharan Nambiar, J.) who was of the opinion that there is an apparent conflict of views in the decisions reported in 1995 (2) KLT 873 -- State of Kerala v. Thomas & 1998 (2) KLJ 613 -- State of Kerala v. Manoharan and Ors. on the one hand and the decision reported in 2003 (3) KLT 100 = ILR 2003 (2) Ker. 480 Sivadasan v. State, on the other.

2. We heard Mr. Sojan, the learned Counsel for the petitioner, and Mr. Sujith Mathew Jose, the learned Public Prosecutor.

Consideration of the Judicial Conflict

3. Before going into the facts of this case we would endeavour to see whether there is any conflict in the decisions referred to above and, if so, which of the decisions lays down the correct law.

4. According to the prosecution the revision petitioner, who is a lady, was found in possession of 1200 grams of ganja on 2.11.1987 and she had, therefore, committed an offence punishable under Section 55(a) of the Abkari Act. The ganja seized in this case, as revealed by Ext.P2 report of chemical analysis, bears the following description:

'Partially crushed dried green leafy material margins having plamately compound leaves with toothed with inconspicuous flowers with dried fruits having characteristics of Ganja'.

Going by the above description it is clear that the ganja seized in this case was not accompanied by the fruiting tops and flowering tops of the cannabis plant and indeed, there is no such contention either, to the contrary.

5. The Abkari Act (Act 1 of 1077 M.E.) is the State legislation on intoxicating liquor and drugs that was in force when the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) ('the N.D.P.S. Act' for short) came into force in the whole of India on 14.11.1985. Section 55(a) of the Abkari Act inter alia makes possession of an 'intoxicating drug' punishable. At the relevant time the punishment provided for such possession was imprisonment for a term extending upto 2 years and with

fine extending upto Rs. 5000/- with a proviso thereto prescribing a minimum mandatory punishment of imprisonment as well as fine for the first offence and a similar minimum mandatory punishment for subsequent offences unless the Magistrate found special reasons to impose a punishment below the mandatory minimum. Clause 14 of Section 3 of the Abkari Act as it stood on the date of commission of the offence in this case, read as follows:--

'Intoxicating drug' means--

- (i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis Sativa*, L.), including all forms known as bhang, sidhi or ganja;
- (ii) 'Charas', that is the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport;
- (iii) any mixture, with or without neutral materials, of any of the above forms of intoxicating drug, or any drink prepared therefrom; and
- (iv) any other narcotic substance which the Government may, by notification, declare to be an intoxicating drug, such substance not being opium, coca leaf, or a manufactured drug, as defined in Section 2 of the [Dangerous Drugs Act, 1930](#)'.

6. When it comes to the N.D.P.S. Act, 'ganja' falls under the definition of 'cannabis' which in turn is a component of the term 'narcotic drug' as defined under Section 2(xiv) of the N.D.P.S. Act. Section 2(iii)(b) of the N.D.P.S. Act defines 'ganja' as follows:--

'Ganja, that is, flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) by whatever name they may be known or designated'.

Thus, it is significant to note that the definition of 'ganja' under the NDPS Act takes in only the flowering and fruiting tops of the cannabis plant excluding the seeds and leaves when not accompanied by the tops. In contra distinction to this definition, the definition of 'intoxicating drug' in the Abkari Act is a wider definition

which takes in all parts of the cannabis plant within the fold of the expression 'intoxicating drug'. In other words, the definition of 'ganja' in the NDPS Act is a restricted definition and the legislature has not intended to bring within its fold the seeds and leaves of the ganja plant if they are not accompanied by the flowering or fruiting tops. To put it differently, even if the N.D.P.S. Act has impliedly repealed the provisions of Section 55(a) of the Abkari Act so far as they relate to 'ganja', the sweep of such repeal does not affect that portion of ganja falling under the definition 'intoxicating drug' and which survives the restricted definition of ganja under the NDPS Act. Even such truncated repeal would not automatically operate with the coming into force of the N.D.P.S. Act as we will presently show, since possession of ganja or cultivation of ganja became punishable offences under the N.D.P.S. Act only after about 4 years of the coming into force of the N.D.P.S. Act.

7. Possession of ganja or cultivation of ganja becomes punishable under Section 20 of the N.D.P.S. Act only if such possession or cultivation is in contravention of the provisions of the said Act or rules etc. Such contravention can take place only if a person commits breach of the prohibition contained in Section 8 of the N.D.P.S. Act. The prohibition with regard to the cultivation and possession of ganja among other substances, is contained in Section 8 of the NDPS Act which to the extent relevant here, reads as follows--

'8. Prohibition of certain operations.--No person shall--

(a) xx xx xx(b) cultivate the opium poppy or any cannabis plant; or

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter state, export inter-state, import into India, export from India or tranship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licensee, permit or authorisation:

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-state and export inter-state of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:'

8. Thus, going by the first proviso to Section 8 of the NDPS Act, the prohibition regarding ganja would operate only upon a notification by the Central Government indicating the date with effect from which the said prohibition would operate. In exercise of the said power the Central Government has issued two notifications, both on 30th May, 1989. As per notification No. S.O.390(E) dt. 30.5.1989 published in the Gazette of India, Extraordinary Part II, Section 3(ii), 13.12.1989 has been specified as the date from which the prohibition inter alia against the possession of ganja for any purpose other than medical and scientific purpose, shall take effect. Similarly, as per a separate notification No. S.O.389(E) dt. 30.5.1989, the Central Government has specified 15.5.1989 as the date from which the prohibition against cultivation of the cannabis plant for the production of ganja for any purpose other than medical and scientific purpose shall take effect. In this case we are concerned with the first mentioned notification wherein 13.12.1989 has been specified as the date from which the prohibition regarding the possession of ganja shall take effect. Thus, even though the NDPS Act came into 'force from 14.11.1985, the prohibition thereunder against the possession of ganja came into force only with effect from 13.12.1989 after which date alone a person keeping possession of ganja as defined under the NDPS Act would be committing an offence punishable under Section 20 of the said Act.

9. Section 81 of the NDPS Act reads as follows:-

'Saving of State and special laws.-- Nothing in this Act or in the rules made thereunder shall affect the validity of any Provincial Act or an Act of any State Legislature for the time being in force, or of any rule made thereunder which imposes any restriction or provides for a punishment not imposed by or provided

for under this Act or imposes a restriction or provides for a punishment greater in degree than a corresponding restriction imposed by or a corresponding punishment provided for by or under this Act for the cultivation of cannabis plant or consumption of, or traffic in, any narcotic drug or psychotropic substance within India'.

The Act of the State Legislature referred to in the said section, so far as the State of Kerala is concerned, is the Abkari Act. Since provision for punishment of possession of ganja falling under the restricted definition referred to above, has been made in the N.D.P.S. Act, the provision contained in Section 55(a) of the Abkari Act so far as it relates to such restricted definition, is not saved by Section 81 of the N.D.P.S. Act. But since no provision has been made in the N.D.P.S. Act for the punishment of possession of ganja comprising of every part other than the fruiting or flowering tops of the cannabis plant, an offence under Section 55(a) of the Abkari Act would still lie with respect to such part. Hence the provisions of the Abkari Act so far as they relate to ganja not falling under the definition of 'ganja' under the NDPS Act, stand unaffected. In other words, there is no implied repeal of the Abkari Act so far as it relates to ganja not covered by the definition of 'ganja' under the NDPS Act. To put it differently, where the ganja seized consists of leaves and seeds not accompanied by the fruiting or flowering tops, it would still continue to be an 'intoxicating drug' as defined under the Abkari Act even after the coming into force of the NDPS Act on 14.11.1985 and even after the notification under Section 8 specifying 13.12.1989 as the date from which the prohibition under the NDPS Act would operate. Hence the view taken by the learned Single Judge in Thomas' case (supra) and in Manoharan's case (supra) to the effect that there is total repeal of the Abkari Act in so far as it relates to ganja by the NDPS Act, with due respect, does not lay down the correct law and we disapprove the same. The repeal would operate, first of all, with effect from 13.12.1989 when the prohibition under the NDPS Act came into force. Secondly, that repeal would apply only in respect of ganja which satisfies the definition of 'ganja' under the N.D.P.S. Act. In other words, where the ganja seized is one which does not contain the fruiting or flowering tops, but which contains only the other parts of the cannabis plant, it is not ganja falling under the ambit of the N.D.P.S. Act and to that limited extent the definition of 'intoxicating drug' contained in Clause (14) of

Section 3 of the Abkari Act will hold good. The observations contained in Sivadasan's case (supra) reflect the correct legal position and we approve the same. Of course, this position may not hold good after the 1996 amendment of the Abkari Act wherein the expression 'intoxicating drug' has been further amended to delete 'any psychotropic substance, narcotic drug or psychotropic drug regulated by the NDPS Act'. The definition of 'intoxicating drug' under the Abkari Act after the said amendment reads as follows:--

(14) 'Intoxicating drug means any intoxicating substance other than a Narcotic drug or psychotropic substance regulated by the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (Central Act, 61 of 1985), which the Government may by notification declare to be an intoxicating drug'.

Whether any of the forms of ganja or any part of the cannabis plant has been dropped from the definition of 'intoxicaating drug' in the amended definition and whether after the amendment of the said definition, an intoxicating drug will be so understood only after a declaration to that effect by the Government or it is the narcotic drug or psychotropic substance which has to be declared as such by the Government, are all complicated areas to which we do not propose to digress in these proceedings. Similarly, by an amendment in the year 1997, a punishment higher than the punishment provided for under the NDPS Act has been prescribed under the Abkari Act for keeping possession of an intoxicating drug under Section 55 of the Abkari Act. By an amendment of the year 2001, the NDPS Act has also undergone drastic changes including the prescription of lesser punishment for certain category of offences. The impact of Section 81 of the N.D.P.S. Act on those amendments is again foreign to the scope of the present discussion.

10. In the light of the above discussion we are not inclined to entertain the contention on behalf of the revision petitioner that Section 55 of the Abkari Act so far as it relates to ganja stands completely repealed by the provisions of the N.D.P.S. Act and therefore the cognizance taken and trial held on a complaint by the Excise Inspector for an offence punishable under Section 55(a) of the Abkari Act, are illegal and that the offence that is attracted is one punishable under Section 20(b)(i) of the N.D.P.S. Act for which the Excise Inspector did not then

have the requisite authorisation under Section 36A(1)(d) of the N.D.P.S. Act to file a complaint before Court.

Notifications by the State Government under the N.D.P.S. Act

11. We would, however, wish to incorporate the various notifications issued by the State Government under the N.D.P.S. Act, for the benefit, of the subordinate Courts trying the offences thereunder. As per G.O.(MS) 137/85/TD dt. 7.11.85 published as SRO 1516/85 in the Kerala Gazette Extraordinary dt. 8.11.85, the State Government empowered police officers of and above the rank of Sub Inspector of Police to exercise the powers and perform the duties specified in Section 42 of the N.D.P.S. Act within the area of their respective jurisdiction. As per G.O.(MS) 146/90/TD dt. 22.10.90 published as SRO 1730/90 in the Kerala Gazette dt. 18.12.90, the Government of Kerala in supersession of SRO 1516/85 referred to above empowered all officers in the police department of and above the rank of Sub Inspector of Police and all officers in the Excise Department of and above the rank of Excise Inspector to exercise the powers and to perform the duties specified in Section 42 of the NDPS Act within the area of their respective jurisdiction and also authorised the said officers to exercise the powers conferred upon them under Section 67 of the N.D.P.S. Act. As per G.O.(MS) 168/92/TD dt. 20.12.92 published in the Kerala Gazette Extraordinary dt. 20.12.1992 the Government of Kerala authorised all officers of and above the rank of Excise Inspectors of the Excise Department and all officers of and above the rank of Sub Inspector of the Police Department to file complaints in respect of offences under the N.D.P.S. Act before the Special Courts within the area of their respective jurisdiction under Clause(d) of Sub-section (1) of Section 36A of the N.D.P.S. Act. As per G.O.(MS) 82/96/TD dt. 26.4.96 published as SRO 386/96 in the Kerala Gazette Extraordinary dt. 26.4.1996 the Government of Kerala empowered all officers of and above the rank of Deputy Forest Range Officers of the Forest Department to exercise all the powers conferred by Section 42 of the N.D.P.S. Act. As per G.O.(MS) 106/95/Home dt. 21.6.1995 published as SRO No. 810/95 in the Kerala Gazette Extraordinary dt. 26.6.1995 all Principal District and Sessions Courts in the State were notified as special Courts for the respective revenue districts under Section 36 of the N.D.P.S. Act. Subsequently, as per G.O.(MS)

197/95/Home dt. 26.7.95 published in the Kerala Gazette dt. 5.8.1995 the following Additional Sessions Courts in the State were also notified as special Courts under the N.D.P.S. Act:-

Thiruvananthapuram District

- 1 I Additional Sessions Court, Thiruvananthapuram
2. II Additional Sessions Court, Thiruvananthapuram.

Kollam District

3. I Additional Sessions Court, Kollam.
4. II Additional Sessions Court, Kollam.

Pathanamthitta District

5. Additional Sessions Court, Pathanamthitta.

Alappuzha District

6. Additional Sessions Court, Alappuzha
7. Additional Sessions Court-I, Mavelikkara.
8. Additional Sessions Court-II, Mavelikkara

Kottayam District

9. Additional Sessions Court, Kottayam

Ernakulam District

10. I Additional Sessions Court, Ernakulam
11. II Additional Sessions Court, Ernakulam
12. III Additional Sessions Court, Ernakulam. (Special Court of the trial of SPE-CBI Cases)-I.

13. IV Additional Sessions Court, Ernakulam. (Special Court of the trial of SPE-CBI Cases)-II, Ernakulam.

14. Additional Sessions Court, Paravur.

Idukki District

15. Additional Sessions Court, Thodupuzha Thrissur District

16. I Additional Sessions Court, Thrissur.

17. II Additional Sessions Court, Thrissur. (Court of Enquiry Commissioner & Special Judge)

Palakkad District

18. I Additional Sessions Court, Palakkad Kozhikode District

19. I Additional Sessions Court, Kozhikode

20. II Additional Sessions Court, Kozhikode. (Forest Tribunal, Kozhikode)

Kannur District

21. Additional Sessions Court, Thalassery.

Besides the aforementioned Courts, as per G.O.(MS) No. 141/97/Home dt. 20.5.1997, a special Court for the trial of cases under the N.D.P.S. Act was also established at Vadakara in Kozhikode District with the judicial districts of Kozhikode, Manjeri, Kalpetta and Thalassery as its area of jurisdiction. Similarly, as per G.O. (MS) No. 76/98/Home dt. 2.4.1998 as special Court for trial of cases under the N.D.P.S. Act was also established at Thodupuzha in Idukki District with the judicial districts of Thodupuzha and Kottayam as its area of jurisdiction.

Facts of the Present Case

12. Now coming to the facts of this case, the case of the prosecution is that on 2.11.1987 at 7 p.m. the petitioner, a lady, was found in possession of 1200 grams

of ganja in a polythene carry bag on the Erumeli Pampavalley road near the chapel at Panapilavu. She was detected by PW.4, the Excise Circle Inspector, and his party which inter alia consisted of PW.1. They were patrolling on special duty in the course of which the above detection was made. Seeing the excise party, the petitioner allegedly became fidgety, perplexed and nervous and thereupon she was apprehended and frisked by the Excise party which came across the contraband ganja. The same was weighed and seized under Ext.P1 mahazar to which PWs.2 and 3 affixed their signature as independent witnesses. After the investigation it was PW5 who was the Excise Inspector, Kanjirappally, who filed the complaint which is described as the charge sheet.

13. PW.1 is the Excise Inspector who accompanied PW4. He is a signatory to Ext.P1 mahazar under which M.O. 1 series of ganja were seized. PWs. 2 and 3 are the independent witnesses to the mahazar and they turned hostile to the prosecution. PW.4 is the detecting officer and he deposed in terms of the prosecution case. PW.5 is the Excise Range Inspector, Kanjirappally, who, after the completion of the investigation, filed the complaint before the trial court. Ext.P1 is the mahazar prepared by PW.4. Ext.P2 is the report of chemical analysis which has confirmed that the substance seized by PW.4 from the petitioner was genuine ganja bearing the description given in paragraph 4 ante. Ext.P3 is the occurrence report prepared by the preventive officer who registered the case as C.R.63/87.

14. When examined under Section 313 Cr.P.C., the accused defined the incriminating circumstances against her in the evidence for the prosecution and maintained her innocence. She stated that 3 or 4 persons came from the forest situated to the north of her house and asked to see her husband. When she told them that he had gone for a funeral, they took her into custody. They took the signatures of two neighbours.

15. The accused did not adduce any defence evidence.

16. The learned Magistrate after trial, as per judgment dated 19.1.1991 found the accused guilty of the offence punishable under Section 55(a) of the Abkari Act and sentenced her to simple imprisonment for 1 year and to pay a fine of Rs. 1000/- and on default to pay the fine, to undergo simple imprisonment for 3 months. An

appeal filed by her as CrI. Appeal No. 20/1991 before the Sessions Court, Kottayam, was dismissed on 31.10.1995. Hence this revision.

Contentions of the Accused

17. The learned Counsel for the revision petitioner made the following submissions before us in support of his fervent plea for acquittal:--

Ext.P2 report of chemical analysis cannot be relied on to convict the accused since no sampling was done by PW.4 and no forwarding note was submitted by him. There is nothing to show that Ext.P2 report pertains to the sample taken in this case. Section 53 of the Abkari Act has not been complied with. While PW1 says that the accused and the contraband were produced before the Kanjirappally Excise Range Office, PW.4 would say that he produced the accused and the properties before the Mudakkayam Excise Range Office. He does not remember the date of the production of the accused and the properties. PW.1 did not see the ganja being weighed. The case of the accused is that no such contraband ganja was seized from her and this case of the accused is probalised by PWs.2 and 3 who are the witnesses to the mahazar. The person who prepared Ext.P1 mahazar has not been examined. In any view of the matter, in the light of the decision reported in 2002 (2) KLT 661 - Purushan v. State of Kerala the conviction is liable to be altered from Section 55(a) to Section 58 of the Abkari Act which, at the relevant time, provided for a sentence of fine only.

Judicial Evaluation

18. We are afraid that we cannot agree with the above submissions. Where experienced officers of the raiding party are familiar with the contraband substance like ganja by smell or taste or by other physical properties, it may not be necessary to take samples from the substance and send the same for chemical analysis in the absence of a statutory provision in that regard. In such cases such experienced Officials can be considered as experts on the question. With regard to ganja specifically falling under the Abkari Act, the question of identification by smell pointedly arose in 1989 (1) KLT 601 - Dominic v. State of Kerala wherein it was observed as follows:-

'It is common knowledge not to say experience of everyday life that many articles are identified by smell, particularly those one is familiar with. Smell is one of the senses of perception with which man is endowed. It is as important as sight or hearing. Many moments of life are mingled with smells. Even memories, identification by smell cannot be rejected as inconclusive in all cases. There may be cases where two articles have like smells due to the presence of a common component or inherent similarities. Ganja or 'cannabis saliva' is known to have a distinctive smell. Identification made by Pws.2 & 3 who had decades of experience in the Department with several opportunities to see and smell ganja can be accepted more so when the quantity was large and smell so strong as stated by them. Law cannot be oblivious to what is obvious to others.'

(See also the decision reported in 1988 (2) KLT 848 Joseph v. State of Kerala and 1992 Cri.L.J. 1140 - Bhim Nahak v. State of Orissa). Thus, in a given case, the ocular and olfactory faculties of persons experienced in the field can be of immense help to the court in identifying a particular substance.

19. A perusal of the case diary shows that there was a requisition to the magistrate requesting to send a sample of 5 grams from the property before court and to forward the same for chemical analysis. Accordingly, a sample was taken from the trial court and forwarded to the chemical examiner's laboratory, Trivandrum. Ext.P2 report of chemical analysis refers to the letter of requisition from the Magistrate and also states that the seals on the sample packet and the sample seal separately sent were tallying with each other. It also refers to C.R.63/87 which is the crime registered in this case. Ext.P2 report shows that the sample of ganja forwarded to the chemical examiner was genuine ganja.

20. The contention based on Section 53 of the Abkari Act is also without any force. That provision will apply only in a case where safe custody of the seized contraband substance is sought to be kept. A perusal of the case diary shows that the accused, along with the properties, was produced before the trial magistrate on 2.11.1987 itself. In such a case there was no question of the ganja being kept under safe custody so as to comply with Section 53 of the Abkari Act. It was from the property which was in the custody of the court that the sample was taken and

forwarded to the chemical examiner for analysis.

21. It is true that PWs.2 and 3 who are the independent witnesses to the mahazar turned hostile to the prosecution. Although they admitted their signatures in the mahazar, they metamorphosed into cunning performers in the witness box. Courts are not unfamiliar with such witnesses turning disloyal to the prosecution. From the mere fact that such witnesses do not support the prosecution, it does not follow that the evidence of the detecting officers in that behalf should be discarded. If, after scrutinising the evidence of the detecting officer carefully, the court is able to accept his testimony as true and believable, as in this case, the court can ignore the evidence of such independent witnesses, (see in this connection the decisions reported in 1995 (1) KLT 636 Suresh v. State, 1981 KLT (SN) 9 - Sivaraman v. State of Kerala and 1979 S.C.C. (Cri) 56 Modan Singh v. State of Rajasthan. It is well settled that the evidence of the official witness alone can form the basis for entering a conviction if his testimony inspires confidence (See State of Kerala v. C. Choyunni - 1980 KLT 107, Dominic v. State of Kerala - 1989 (1) KLT 601, Sadanandan v. State of Kerala -1992 (1) KLT (SN) 22 Case No. 28, Tahir v. State (Delhi) - 1996 S.C.C. (Cri) 515, Sama Alama Adulla v. State of Gujarath - AIR 1996 S.C. 569, Balbir Singh v. State - 1997 S.C.C. (Cri) 134, Sahib Singh v. State of Punjab - 1997 S.C.C. (Cri) 315).

22. The submission based on the non-examination of the person who prepared Ext.P1 mahazar is also equally misconceived. It was PW.4 who prepared the mahazar as deposed to by him. It is true that the mahazar has been written in the handwriting of a preventive officer on his dictation. There was no need for examining the preventive officer who was merely the scribe of the mahazar.

23. The last submission based on the decision reported in 2002 (2) KLT 661 (supra) also cannot be acceded to. Unlike Section 58, Section 55 contemplates a situation where the possession is in contravention of the provisions of the Act or the Rules. That is why an offence falling under Section 55 is considered to be graver than one falling under Section 58 and that explains the lesser punishment prescribed under Section 58 than the one prescribed under Section 55. In this case the offence is clearly one punishable under Section 55(a) since possession

of ganja was in contravention of the provisions of the Abkari Act. Hence we are not inclined to alter the conviction from one under Section 55(a) to Section 58 of the Abkari Act.

24. What now survives for consideration is the question as to whether the sentence imposed on the revision petitioner is proper or not. Even though we are not able to find any special or adequate reason to go below the mandatory minimum prescribed for the offence, we do not think that imposition of a punishment more than the statutory minimum is called for in this case having regard to the fact that nearly 20 years have elapsed since the date of occurrence and the petitioner, a lady, due to passage of time is now nearing 60 years of age. Accordingly, we alter and reduce the sentence to the statutory minimum viz. simple imprisonment for six months and a fine of Rs. 1000/-and, on default to pay the fine, to undergo simple imprisonment for one month.

In the result this Crl.R.P. is dismissed confirming the conviction but modifying the sentence as above. It goes without saying that the petitioner will be entitled to set off under Section 428 Cr.P.C.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com