

SUPREME COURT OF INDIA

A.T. Prakashan

Vs.

Excise Inspector

(K.S. Radhakrishnan and Vikramajit Sen JJ.)

04.04.2014

JUDGMENT

K.S. RADHAKRISHNAN, J.

1. Leave granted.
2. This appeal arises out of the judgment of the Kerala High Court in Crl. Appeal No.1104 of 2004, by which the High Court modified the sentence awarded by the trial Court to that of rigorous imprisonment for one year and to pay a fine of Rs.1 lakh, and in default, simple imprisonment for three more months for an offence committed under Section 55(a) of the Abkari Act, 1077.
3. The prosecution case is that on 15.9.1999 at 7.00 a.m., the appellant was found in possession of 10 litres of arrack while he was transporting the same through the road in between Mokavoor and Kypurathpalam. PW6, Excise Inspector, registered Crime No.20 of 1999 through Ext.P3 occurrence report. After investigation, he laid the final report before the Judicial First Class Magistrate's Court, Quilandy, where it was taken on file as C.P. No.19 of 2001. The learned Magistrate committed the case to the Court of Sessions.
4. Prosecution, in support of the case, examined PW1 to PW6 and Ext.P1 to Ext.P5 were marked. MO1 was identified. After the prosecution evidence, the accused was examined under Section 313 of the Code of Criminal Procedure. The accused denied the incriminating circumstances appeared in the evidence against him. On the side of

the accused, DW1 was examined. As already stated, the trial Court, after appreciating the oral and documentary evidence, convicted the appellant under Section 55(a) of the Abkari Act, for the offence committed and sentenced him to rigorous imprisonment for two years and six months and a fine of Rs.1 lakh, and in default, further rigorous imprisonment for six months, which, as already stated, was modified by the High Court.

5. Learned counsel submitted that after coming into force of Act 10 of 1996, the appellant could not have been charge-sheeted under Section 55(a) of the Act, but only under Section 8 of the amended Act 10 of 1996. Learned counsel also pointed out that the offence was committed in the year 1999, hence, he could have been charged-sheeted only under Section 8 of the Act and not under Section 55(a) of the Act, which would apply only in cases of liquor and intoxicating drug other than arrack.

6. It is true that the proper Section, which is attracted in the instant case, is Section 8(1) of the Abkari Act, as amended by Act 10 of 1996, not Section 55(a). But, misquoting of the Section or misapplying the provisions has caused no prejudice to the appellant, since the offence has been clearly made out. Offence under Section 55(a) can always be altered to Section 8(1) of Act 10 of 1996, therefore, we find no error in the conviction recorded by the Courts below.

7. However, considering the fact that the appellant has no previous history of committing such offence, we are inclined to modify the sentence to that of six months' simple imprisonment and a fine of Rs.50,000/-, and in default, to undergo further simple imprisonment for three months.

8. The appeal is, accordingly, allowed to that extent, modifying the sentence.