

**SUPREME COURT OF INDIA**

Lalichan

Vs.

State of Kerala

CrI.A.No.22 of 2019

(Abhay Manohar Sapre and R.Subhash Reddy,JJ.,)

07.01.2019

**JUDGMENT**

**R.Subhash Reddy,J.,**

SLP(CrI)No.8113 of 2017

1. Leave granted.

2. This Criminal Appeal is filed by the sole accused in S.C. No. 274 of 2013 on the file of the First Additional Sessions Judge, Thodupuzha, aggrieved by the conviction recorded and sentence imposed by the Judgment dated 22.11.2013 and the Judgment of the High Court of Kerala at Ernakulam dated 25.01.2017 passed in Criminal Appeal No. 1701/2013.

3. The appellant herein was prosecuted for offence punishable under Section 8(2) and Section 63 of Kerala Abkari Act. It was the case of the prosecution that when the Excise Inspector Peerumedu Excise Range conducted a search in the House of the Appellant accused on 08.01.2011, he was found to be in possession of 4.5 litres of arrack in a plastic can and 3.750 litres of Indian Made Foreign Liquor.

4. It is alleged that such possession is illegal and in violation of the Kerala Abkari Act. He was arrested and contraband was seized by conducting seizure mahazar.

5. For the aforesaid violations, he was chargesheeted and the prosecution has examined four witnesses, including, the detecting officer and marked Exhibits P1 to P9 and MO1 to MO3 were also identified during trial. On appreciation of evidence, the Trial Court by Judgment dated 22.11.2013, found the accused guilty and was convicted under Sections 8(2) and 63 of the Abkari Act.

6. On conviction, he was sentenced to undergo simple imprisonment for one year and fine of Rs.1,00,000/- (Rupees One Lakh) under Section 8(2) of the Act, and to pay a fine of Rs.5000/- (Rupees Five Thousand Only) under Section 63 of the Act. Aggrieved by the said

conviction and sentence imposed, he has filed Criminal Appeal No. 1701/2013 before the High Court of Kerala at Ernakulam. The High Court vide Judgment dated 25.01.2017, while confirming the conviction recorded has modified the sentence by reducing the simple imprisonment to nine months. However, the sentence imposed under Section 63 of the Act was maintained.

7. When the Special Leave Petition is filed before this Court by seeking condonation of delay, this Court vide Order dated 13.10.2017, while condoning delay issued notice confining only to the question of factum of sentence.

8. We have heard the Counsel for the appellant and Counsel for the respondent-State and perused the Judgment of the Trial Court as well as the High Court and other material placed on record.

9. During the course of hearing, it is brought to our notice that the appellant herein was in custody for about thirty-five days and, by Order dated 07.09.2017 passed by the Learned Chamber Judge, has granted exemption from surrendering.

10. Having heard the learned counsel on both the sides, seeing the gravity of offence and the quantum of liquor seized during search conducted on 08.01.2011, we are of the view that the interest of justice would be met if the imprisonment is reduced to the period, already undergone by the appellant. As it stated that he was already in the custody for thirty-five days, we deem it appropriate to modify the sentence, for the period already undergone. At the same time, we confirm the penalty imposed by the Trial Court, as confirmed by the High Court. The penalty amount, if not paid already, shall be paid within a period of four weeks from today. The Sentence imposed in the Judgment of the Trial Court dated 22.11.2013 as modified by the High Court Judgment dated 25.01.2017, stands modified, to the extent indicated above.

11. The Appeal is allowed in part as indicated above. No order as to costs.