

SANTOSH @ SANTOSH KUMAR

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v.

STATE OF KERALA

(Criminal Appeal No. 1409 of 2018)

NOVEMBER 16, 2018

B

[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]

*Kerala Abkari Act*

*s. 55(a) and (1) – Prosecution u/s. 55(a) – Of appellant-accused alongwith other co-accused – Trial court acquitting one co-accused, convicted the appellant-accused and another co-accused – They were sentenced to RI for five years and fine of Rs. one lakh with default clause – High Court upheld the conviction, but reduced the sentence of RI from five years to three years – Imposition of fine of Rs. one lakh was maintained – Appeal to Supreme Court – Notice was issued only confined to issue of sentence – Held: Appellant’s case falls under clause (a) of s. 55 – Therefore, it is governed by s. 55(1) – As per s. 55(1) jail sentence may vary and extend upto ten years, but so far as fine is concerned minimum amount of Rs. one lakh is mandatory – However, the court has discretion to impose fine more than Rs. one lakh – In the facts of the case, appellant has made out a case for interference in the quantum of sentence awarded by High Court – Sentence is reduced to the period already undergone i.e. 1 year 3 months – Amount of fine is enhanced to Rs. one lakh fifty thousand – Sentence/Sentencing.*

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**Allowing the appeal, the Court**

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**HELD: 1. Appellant’s case falls under clause (a) of s. 55 of Abkari Act, therefore, it is governed by Section 55 (1) of the Abkari Act. From a mere reading of Section 55 (1), it is clear that insofar as the jail sentence is concerned, it may vary and extend up to 10 years depending upon the facts of each case, but insofar as the fine amount is concerned, the Court has to impose the minimum amount of Rs. one lakh. It is, therefore, mandatory for the Court to impose a fine while awarding jail sentence and secondly, it cannot be less than Rs. one lakh. However, the Court**

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A has discretion to impose fine more than Rs. one lakh depending upon the facts of each case. [Paras 15, 16 and 17][1186-C-E]

2. Keeping in view the facts that the incident in question is of the year 2007; the appellant has undergone jail sentence of 1 year 3 months out of three years total period of jail sentence awarded by the High Court; the appellant was never involved in any criminal activity except the case at hand; and out of three accused, one was given the benefit of doubt, the Court is of the considered opinion that the appellant has made out a case for interference in the quantum of sentence awarded to him by the High Court. [Para 19][1186-F-G]

3. The appellant is now awarded jail sentence of “already undergone”. However, so far as the fine amount of Rs. one lakh imposed by the Courts is concerned, it is modified and accordingly enhanced from Rs. One Lakh to Rs. One Lakh Fifty Thousand (Rs.1,50,000/-). On failure to deposit the enhanced fine amount, the appellant will have to undergo one more year of jail sentence. [Para 20][1187-A-B]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1409 of 2018

E From the Judgment and Order dated 13.06.2016 of the High Court of Kerala at Ernakulam in CrI.A. No. 1837 of 2010.

Shinoj K.Narayanan, K. Rajeev, Advs. for the Appellant.

Vipin Nair, P. B. Suresh, Anshumaan Bahadur Advs. for the Respondent.

F The Judgment of the Court was delivered by

**ABHAY MANOHAR SAPRE, J.** 1. Leave granted.

2. This appeal is filed against the final judgment and order dated 13.06.2016 passed by the High Court of Kerala at Ernakulam in CrI. A. No.1837 of 2010 whereby the High Court allowed the appeal in part by maintaining the conviction but reducing the sentence imposed on the appellant herein by order dated 13.09.2010 passed by the Additional Sessions Court(Adhoc-1), Palakkad in Sessions Case No.221 of 2009.

3. Few facts need to be mentioned for disposal of this appeal, which involves a short question.

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4. The appellant along with two others were prosecuted for commission of an offence punishable under Section 55 (a) of the Abkari Act enacted by the State of Kerala in Sessions Case No.221/2009 in the Court of Additional Sessions Judge, Palakkad. A

5. By order dated 13.09.2010, the Sessions Judge acquitted Accused No. 3 but convicted the appellant herein (Accused No. 2) and Accused No.1 and sentenced them to undergo rigorous imprisonment for five years and a fine of Rs.1 lakh and in default of payment of fine, to further undergo rigorous imprisonment for one year. B

6. The appellant felt aggrieved and filed appeal in the High Court of Kerala. By impugned order, the High Court upheld the conviction but interfered in the quantum of sentence awarded to the appellant by the Sessions Judge. The High Court reduced the jail sentence from 5 years to 3 years and maintained the imposition of fine amount of Rs.1 lakh being mandatory for imposition along with jail sentence. C

7. The appellant (Accused No.2) felt aggrieved and filed the present appeal by way of special leave against the order of the High Court in this Court. D

8. This Court by order dated 07.09.2018 issued notice of SLP to the respondent (State) confining to examine only the question relating to quantum of sentence awarded to the appellant. E

9. Therefore, the short question, which arises for consideration in this appeal, is whether any case is made out on facts and in law for interfering in the quantum of sentence awarded to the appellant (Accused No. 2) by the High Court.

10. Heard Mr. Shinoj K. Narayanan, learned counsel for the appellant-accused and Mr. Vipin Nair, learned counsel for the respondent-State. F

11. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal as indicated below. G

12. The incident in question, which gave rise to the appellant's prosecution, occurred in 2007. It was in relation to seizure of spirit stored in 58 cans in one residential house and in one car parked in the porch of the house. H

A 13. Three persons were arrested in connection with this incident. The appellant was one of them who, according to the prosecution, had taken the said house on rent. The seizure of the spirit from the house in question was held illegal and was, therefore, held to be an offence punishable under Section 55(a) of the Abkari Act.

B 14. Section 55(1) of the Abkari Act provides that for any offence other than an offence falling under clause (d) or clause (e), shall be punishable with imprisonment for a term, which may extend to ten years and with fine, which shall not be less than Rs. One Lakh.

C 15. So far as the appellant's case is concerned, it falls under clause (a), therefore, it is governed by Section 55 (1) of the Abkari Act.

D 16. From a mere reading of Section 55 (1), it is clear that insofar as the jail sentence is concerned, it may vary and extend up to 10 years depending upon the facts of each case, but insofar as the fine amount is concerned, the Court has to impose the minimum amount of Rs. one lakh.

17. It is, therefore, mandatory for the Court to impose a fine while awarding jail sentence and secondly, it cannot be less than Rs. one lakh. However, the Court has discretion to impose fine more than Rs. one lakh depending upon the facts of each case.

E 18. It is not in dispute that the appellant has already undergone jail sentence of around 1 year and 3 months till date and he still continues to remain in jail. In other words, the appellant out of total jail sentence of 3 years awarded to him by the High Court has so far undergone for a period of one year approximately. It is also not in dispute that the appellant was not involved in any other criminal case except the one in question.

F 19. Keeping in view the facts that the incident in question is of the year 2007; Second, the appellant has undergone jail sentence of 1 year 3 months out of three years total period of jail sentence awarded by the High Court; Third, the appellant was never involved in any criminal activity except the case at hand; and the last, out of three accused, one was given the benefit of doubt, we are of the considered opinion that the appellant has made out a case for interference in the quantum of sentence awarded to him by the High Court.

G 20. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned order is modified to the extent  
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that the appellant is now awarded jail sentence of “already undergone”. A  
However, so far as the fine amount of Rs. one lakh imposed by the  
Courts is concerned, it is modified and accordingly enhanced from Rs.  
one Lakh to Rs. one Lakh Fifty Thousand (Rs.1,50,000/-). In other words,  
the appellant is now awarded jail sentence of “already undergone” and  
a fine of Rs.1,50,000/-. Failure to deposit the enhanced fine amount, the B  
appellant will have to undergo one more year of jail sentence.

Kalpana K. Tripathy

Appeal allowed.