

VILASINI

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v.

STATE OF KERALA

(Criminal Appeal No. 1221 of 2018)

SEPTEMBER 25, 2018

**[ABHAY MANOHAR SAPRE AND S. ABDUL NAZEER, JJ.]**

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*Kerala Abkari (Amended) Act, 1997:*

*ss.8(1) and (2) – Trial court convicted the appellant and sentenced to undergo rigorous imprisonment for six months with a fine amount of Rs. 1 lakh and, in default in payment of fine amount, to undergo simple imprisonment for another period of three months – High Court upheld the conviction but modified the sentencing by reducing the jail sentence from “six months rigorous imprisonment” to three months simple imprisonment” and in default of payment of fine amount, “three months simple imprisonment” to “two weeks simple imprisonment” – Aggrieved appellant filed instant appeal – Plea of appellant was that she was poor lady having no criminal antecedents and means to pay a fine amount of Rs. 1 lakh – Held: s.8(2) of the Act prescribes a punishment for an offence punishable under s.8(1) which may extend to 10 years and with fine amount which shall not be less than Rs. 1 lakh – Thus it is mandatory for imposing “Jail Sentence” and “Fine Amount” under s.8(2) – The discretion to award jail sentence, however, varies upto 10 years but not beyond it – In other words, the Court has the jurisdiction to impose jail sentence for any period but such period cannot exceed 10 years – The maximum limit to impose jail sentence is fixed as 10 years – How much jail sentence should be imposed would vary from case to case – So far as the imposition of fine amount along with award of jail sentence is concerned, it is also mandatory and it cannot be less than Rs. 1 lakh – In the instant case, the appellant is a lady and is living below the poverty line and has no means to pay a sum of Rs. 1 lakh to the State – She was not involved in any criminal case in the past and nor was she ever involved in the case relating to the offences punishable under the Act – She is above 50 years of age – She was found in possession of only 3 liters of arrack which resulted in her conviction – The case is almost 12 years old from now and she has already undergone two and a half months jail sentence out of total jail sentence of 3 months awarded to her –*

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- A *In view of these factors and having regard to the totality of the facts and circumstances of the case, the appellant's jail sentence is modified from "3 months" to "already undergone" and also the default sentence reduced from "two weeks" to that of the "one week" in the event, she is not able to deposit the mandatory fine amount of Rs. 1 lakh within one month – In this view of the matter,*
- B *the appellant is not now required to undergo the substantive jail sentence of 3 month– However, if the appellant fails to deposit the fine amount of Rs. 1 lakh within one month, she will have to undergo one week jail sentence on account of non-deposit of fine amount of Rs. 1 lakh within the prescribed time – Sentence/*
- C *Sentencing.*

*Kerala Abkari (Amended) Act, 1997: s.8(2) – Sentence – Court has the jurisdiction to impose jail sentence for any period but such period cannot exceed 10 years – The maximum limit to impose jail sentence is fixed as 10 years.*

- D *Kerala Abkari (Amended) Act, 1997: s.8(2) – Fine – The Court has no jurisdiction to impose fine amount less than Rs.1 lakh because minimum limit prescribed under s.8 (2) is Rs. 1 lakh – A "fortiori", the Court has discretion to impose a fine amount more than Rs. 1 lakh because there is no upper limit prescribed in law for imposing fine amount exceeding Rs. 1 lakh.*
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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1221 of 2018.

From the Judgment and Order dated 28.06.2017 of the High Court of Kerala at Ernakulam in Crl. Appeal No. 1580 of 2011.

- F James P. Thomas, Adv. for the Appellant.  
C. K. Sasi, Adv. for the Respondent.

The following Order of the Court was passed :

### **ORDER**

- G 1. Leave granted.
2. This appeal is directed against the final judgment and order dated 28.06.2017 passed by the High Court of Kerala at Ernakulam in Criminal Appeal No.1580 of 2011 whereby the High Court upheld the conviction of the appellant but reduced the rigorous imprisonment from

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6 months to simple imprisonment for 3 months and in default of payment of fine to undergo simple imprisonment for 2 weeks instead of 3 months. A

3. Facts of the case lie in a narrow compass as would be clear from its narration hereinbelow.

4. The appellant (lady) was prosecuted and eventually convicted for the commission of offences punishable under Section 8 (1) and (2) of the Kerala Abkari (Amended) Act, 1997 (hereinafter referred to as “the Act”) in SC No. 699/2010 by the Additional District and Sessions Judge, Kozhikode by his order dated 23.07.2011 and sentenced to undergo rigorous imprisonment for six months with a fine amount of Rs.1 lakh and, in default in payment of fine amount, to undergo simple imprisonment for another period of three months. B C

5. Challenging her conviction, the appellant filed appeal in the High Court of Kerala. By impugned order, the High Court upheld the conviction but reduced the jail sentence from “6 months rigorous imprisonment” to “3 months simple imprisonment” and in default of payment of fine amount, “3 months simple imprisonment” to “2 weeks simple imprisonment”. It is against this order, the appellant-accused has felt aggrieved and filed the present appeal by way of special leave in this Court. D

6. Heard Mr. James P. Thomas, learned counsel for the appellant and Mr. C.K. Sasi, learned counsel for the respondent. E

7. The submission of the learned counsel for the appellant (accused) was only one. Learned counsel did not challenge the conviction on merits but only contended that this Court should interfere in quantum of jail sentence and fine amount awarded by the two courts to the appellant. Learned counsel urged that out of total 3 months jail sentence awarded by the High Court, the appellant has already undergone nearly two and half months partly as an under trial and the remaining as convict after the conviction order was passed by the Courts below. F

8. It was urged that the appellant is a poor lady having no criminal antecedents and means to pay a fine amount of Rs.1 lakh. It was therefore, urged that keeping in view these facts, this Court should consider passing an appropriate order on the question of quantum of sentence and fine amount in the appellant’s favour. G

9. In reply, learned counsel for the respondent (State) supported the impugned order. H

A 10. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal in part and accordingly modify the sentence to the extent indicated below.

11. Section 8 (2) of the Act as amended by Act No.16 of 1997, which applies to this case, reads as under:

B **“(2) If any person contravenes any provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to ten years and with fine which shall not be less than rupees one lakh”.**

C 12. Section 8 (2) of the Act prescribes a punishment for an offence punishable under Section 8 (1) which may extend to 10 years and with fine amount which shall not be less than Rs.1 lakh.

D 13. What is thus mandatory for imposing punishment under Section 8 (2) is the “Jail Sentence” and “Fine Amount”. The discretion to award jail sentence, however, varies upto 10 years but not beyond it. In other words, the Court has the jurisdiction to impose jail sentence for any period but such period cannot exceed 10 years. The maximum limit to impose jail sentence is fixed as 10 years. How much jail sentence should be imposed would vary from case to case.

E 14. So far as the imposition of fine amount along with award of jail sentence is concerned, it is also mandatory and it cannot be less than Rs.1 lakh. In other words, the Court has no jurisdiction to impose fine amount less than Rs.1 lakh because minimum limit prescribed under Section 8 (2) is Rs.1 lakh.

F 15. A “*fortiori*”, the Court has discretion to impose a fine amount more than Rs.1 lakh because there is no upper limit prescribed in law for imposing fine amount exceeding Rs.1 lakh.

G 16. Coming now to the facts of the case, we notice that firstly, the appellant is a lady; Secondly, she is living below the poverty line and has no means to pay a sum of Rs.1 lakh to the State; Thirdly, she was not involved in any criminal case in the past and nor was she ever involved in the case relating to the offences punishable under the Act; Fourthly, she is above 50 years of age; Fifthly, she was found in possession of only 3 liters of arrack which resulted in her conviction; Sixthly, the case is almost 12 years old from now; Seventhly, she has already undergone two and a half months jail sentence out of total jail sentence of 3 months awarded to her.

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17. Keeping in view the aforesaid 7 factors and having regard to the totality of the facts and circumstances of the case, we are inclined to modify the appellant's jail sentence from "3 months" to "already undergone" and also modify and accordingly reduce the default sentence from "two weeks" to that of the "one week" in the event, she is not able to deposit the mandatory fine amount of Rs.1 lakh within one month from the date of this order.

18. In view of the foregoing discussion, the appeal succeeds and is hereby allowed in part. Impugned order insofar as it relates to imposition of jail sentence and default sentence are modified to the extent that the total jail sentence of 3 months is now reduced to "already undergone" whereas so far as default sentence is concerned, it is reduced from "2 weeks" to that of "one week".

19. In this view of the matter, the appellant is not now required to undergo the substantive jail sentence of 3 months.

20. However, if the appellant fails to deposit the fine amount of Rs.1 lakh within one month, she will have to undergo one week jail sentence on account of non-deposit of fine amount of Rs.1 lakh within the prescribed time.

Devika Gujral

Appeal partly allowed.