

NON-REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 906 OF 2022
(Arising out of SLP(Crl.) No(s). 9195 of 2021)

GOPINATHAN

....APPELLANT(S)

VERSUS

THE STATE OF KERALA

....RESPONDENT(S)

J U D G M E N T

Rastogi, J.

1. Leave granted.
2. The correctness of judgment and order dated 11th June, 2021 passed by the High Court of Kerala in Criminal Appeal No. 800 of 2011 is challenged in appeal before this Court.
3. The appellant(A-1) was charge-sheeted for offence under Section 55(g) and 8(1) read with 8(2) of the Abkari Act and after facing trial was convicted for the afore-stated offences and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1,00,000/- each, in default rigorous imprisonment for 1 year for each offence under Section 8(1) read with 8(2) and 55(g) of

the Abkari Act and substantive sentences were directed to run concurrently.

4. As per the prosecution, on 25th February, 2007 at 9.10 a.m., the Sub-Inspector, Perunad police station and party found the appellant along with six others, engaged in manufacturing arrack in a place by name Kochethupara in Perunad village and Manakayam Muri within Ranni Taluk in Perunad police station limits. Knowing about the illegal activities of the appellant and others, police party proceeded to the place and found the appellant and others near a small watercourse, engaged in manufacturing arrack. After seeing the police, all of them tried to run away from the place. The police tried to chase them but only the appellant could be apprehended. After taking him back to the place of occurrence, the items were seized under a mahazar.

5. According to the prosecution, they found the accused engaged in manufacturing of arrack in a remote area, 40 liters of arrack was found kept in two jars of 20 litres each, at some distance about 3750 litres of wash was also seen concealed under the bushes in 250 tins each containing 15 liters each. Samples were collected

from the jars and the wash, remaining wash was destroyed at the place itself. The accused appellant was arrested from the place and crime was registered against him.

6. After investigation, charge-sheet was filed against 7 accused persons including the appellant. The learned Magistrate, after perusing the record, took cognizance and after completing other formalities committed the case to the Court of Sessions.

7. During the course of trial, A-2 expired and accordingly, the proceeding against him stood abated. After the Sessions Judge conducted the trial, the appellant was held guilty and convicted for the offences under Section 8(1) read with 8(2) and 55(g) of the Abkari Act and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs. 1,00,000/- each, and in default, rigorous imprisonment for 1 year each.

8. So far as A-3 to A-7 are concerned, they are acquitted under Section 235(1) of Code of Criminal Procedure, 1973 by the Court of Sessions by a judgment dated 9th May 2011.

9. On appeal being preferred by the appellant, the High Court on perusal of record and taking into consideration the submissions

made and the evidence of PW-1 and PW-3, upheld the order of conviction passed by the learned trial Court but taking the overall factors into consideration and particularly the date of incident and the age factor of the appellant and noticing that there are no criminal antecedents against him, while upholding conviction under Section 55(g) of the Abkari Act, modified and reduced the sentence to rigorous imprisonment for two years and to pay a fine of Rs.1,00,000/-, each on both counts, in default, to suffer rigorous imprisonment for six months but was not inclined to impose separate sentences for the offence punishable under Section 8(1) of the Abkari Act by judgment dated 11th June 2021.

10. We have heard learned counsel for the parties and with their assistance perused the material available on record as well as the statements of PW-1 and PW-3.

11. Though both PW-1 and PW-3 have been extensively cross-examined, but nothing could be elicited out of their evidence and we find no reason to deviate from the view which has been expressed by the High Court so far as the conviction of appellant for the afore-stated offences is concerned.

12. At the same time, taking into consideration the overall aspect of the matter and the fact that 15 years have been rolled by this time from the date of incident which may due to institution lapses(the matter could have been finalized earlier) and noticing that there are no such criminal antecedents against the appellant as indicated by the respondent in para 9 of the counter affidavit and the fact that the appellant has crossed 63 years of age, consider it appropriate to modify the sentence to simple imprisonment of one year under Section 55(g) of the Abkari Act and he shall also be liable to pay a fine of Rs. 1,00,000/- on both the counts, in default, he shall suffer simple imprisonment for six months.

13. With the aforesaid directions, the appeal stands disposed of.

14. Pending application(s), if any, shall stand disposed of.

.....**J.**
(AJAY RASTOGI)

.....**J.**
(C.T. RAVIKUMAR)

NEW DELHI
JUNE 22, 2022