

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 907 OF 2022
(ARISING OUT OF SLP(CRL.) NO(S). 239 OF 2022)

SUNIL KUMAR

....APPELLANT(S)

VERSUS

STATE OF KERALA & ANR.

....RESPONDENT(S)

J U D G M E N T

Rastogi, J.

1. Leave granted.
2. The correctness of the judgment passed by the High Court of Kerala dated 24th November, 2020 in Criminal Appeal No. 460 of 2006 is a subject matter of challenge in appeal before this Court.
3. The appellant, after facing trial, was convicted for the offence under Section 55(a) of the Abkari Act and Section 309 IPC and was sentenced to undergo simple imprisonment for 3 years and to pay a

fine of Rs.1,00,000/- (Rupees One Lakh only) each, in default of payment of fine, to undergo simple imprisonment for one year under Section 55(a) of Abkari Act and further sentenced to pay fine of Rs.2,000/- (Rupees Two Thousand only) under Section 309 IPC by the learned Additional Sessions Judge by judgment dated 7th October 2005.

4. On appeal being preferred, the High Court while upholding conviction, modified the sentence to undergo simple imprisonment for 2 years and to pay a fine of Rs. 1,00,000/-(Rupees One Lakh only), in default of payment of fine, to undergo simple imprisonment for one year and conviction and sentence under Section 309 IPC was set aside, that became a subject matter of challenge in appeal before this Court.

5. As per the case of the prosecution, the appellant under the leadership of co-accused (A-3 to A-5) was found dealing with spirit and for that purpose, A-3 had taken house on rent. A-3 to A-5 bought 3000 litres of spirit in 86 cans each containing 35 litres and stored the same in two rooms on the upstairs of the above said house, and entrusted the same to the appellant(A-1) and A-2 to deal

with it on commission basis. This was detected on 12th June, 1999 at about 01:55 a.m. by PW-10 and his police party. When the appellant and A-2 came to know about the same, they attempted to commit suicide by inflicting injuries on the wrist portion of their hands, and thus, according to the prosecution, the accused committed offence under Section 55(a) of the Abkari Act and Section 309 IPC.

6. To substantiate the case, prosecution examined PW-1 to PW-11. In support of the defence, four witnesses were examined as DW-1 to DW-4 and the record was exhibited during the course of trial.

7. After going through the evidence and documents, the trial Court found the appellant(A-1), A-2 and A-3 guilty and convicted them under Section 55(a) of the Abkari Act and A-1 and A-2 under Section 309 IPC.

8. The High Court on appeal being preferred, perused the record and upheld the conviction of the appellant under Section 55(a) of the Abkari Act but modified the sentence to undergo simple imprisonment of two years and fine of Rs. 1,00,000/- (Rupees One

Lakh only), in default of payment of fine, the appellant was directed to undergo simple imprisonment for one year and set aside conviction under Section 309 IPC.

9. We have heard learned counsel for the parties and with their assistance have gone through the record as well as statements of PW-1 to PW-11 and also the statement of the accused appellant recorded under Section 313 CrPC and find no reason to deviate from the finding of conviction returned by the learned trial Court and confirmed by the High Court under the impugned judgment.

10. At the same time, taking into consideration the overall aspect of the matter and the fact that 23 years have been rolled by this time from the date of incident and also noticing that there are no criminal antecedents against the appellant as indicated in Para 20 of the impugned judgment, while upholding conviction under Section 55(a), consider it appropriate to modify the sentence to simple imprisonment of one year and to pay a fine of Rs. 1,00,000/- (Rupees One Lakh only), in default of payment of fine, to further undergo simple imprisonment of six months.

11. With this modification, the appeal stands disposed of.

12. Since the appellant was granted exemption from surrendering by an Order of this Court dated 10th January 2022, the appellant shall now surrender and undergo the remaining part of the sentence. If the appellant fails to surrender within four weeks, the authorities shall take appropriate action in accordance with law.

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

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

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

NEW DELHI
JUNE 22, 2022.