

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No. 2067 of 2017
[Arising from SLP (Crl.) No.6672 of 2017]

MAVILA SANTHOSH

... APPELLANT

versus

THE STATE OF KERALA

...RESPONDENT

ORDER

1. Leave granted.
2. The appellant was found in possession of 5 litres of arrack in a plastic can on 29.4.2005. The appellant was arrested on the spot by the Circle Inspector of Excise, Thaliparamba. Charges were framed against him under Section 8(2) of the Kerala Abkari Act (for short 'the said Act'). The appellant, however, denied the charges but post trial was convicted and sentenced to undergo rigorous imprisonment (for short 'RI') of three years and to pay a fine of Rs.1 lakh and in default of payment of fine, the appellant was directed to undergo simple imprisonment (for short 'SI') of one year by the judgment of the trial court dated 25.11.2011.
3. The appellant filed an appeal against the said conviction and by the impugned judgment dated 29.5.2017, the conviction has been upheld but some redeeming

features were found in view of the quantity of arrack involved and there being no other incident, whereby the sentence was reduced to RI for one year but the fine imposed was maintained though in default of payment of fine the sentence was reduced to two months SI.

4. Learned counsel for the appellant before us has limited his submissions only to the issue of quantum of sentence as the notice was issued only for the said purpose on 15.9.2017.
5. Learned counsel for the appellant submits that the appellant has already undergone about five months of sentence and in view of there being no pre or post antecedents of this nature, the sentence may be reduced. He further submits that the appellant is incapable of depositing the fine of Rs.1 lakh though he concedes that this is the minimum fine prescribed in the said Act. In this behalf, he relies upon the judgment of this Court in *Sasikumar & Anr. v. State of Kerala*¹ wherein while discussing the aspect arising from the minimum fine prescribed of Rs.1 lakh without a maximum limit under Section 8(2) of the said Act, this Court observed as under:

“13. Before parting with the record of the case, we would like to point out that Section 8(2) of the Abkari Act does not fix any upper limit for the fine but lays down that the fine shall not be less than Rs.1,00,000/-. Since the minimum amount of fine prescribed by the law is kept so high, the courts naturally give the default sentence of imprisonment for a substantially longer period. As noted above, the trial court has given the default sentence of one year which was reduced by the High Court to six months. We may note that in cases where poor people like the appellants who may only be the carrier of the arrack or who may be trying to eke out a living from the illegal trade are caught committing the offence, they are hardly in position to pay the fine of Rs.1,00,000/-

1 (2012) 9 SCR 1061

and for them the default sentence becomes an additional period of incarceration. In a way, fixing the minimum fine at such a high amount, regardless of the countless possible variables in the commission of the offence under Section 8(1), leads to discrimination in favour of those convicts who have sufficient means to pay the fine and, thus, avoid any default imprisonment and the small fries for whom the default sentence would invariably mean an additional sentence of imprisonment. To our mind, it is desirable to leave the Court free in exercise of judicial discretion in the matter of imposition of fine.”

6. On consideration of the aforesaid facts and circumstances especially taking into consideration that the appellant has no prior or post incident and the quantum of arrack was five litres, we are inclined to accept the plea of the learned counsel for the appellant and consider it appropriate to reduce the sentence to six (6) months RI instead of one (1) year as imposed in the impugned order.
7. Insofar as the aspect of fine, we sustain the fine but in case of its non-payment reduce the period of sentence to one (1) month SI.
8. The appeal is allowed to the aforesaid extent leaving the parties to bear their own costs.

.....**J.**
(J. Chelameswar)

.....**J.**
(Sanjay Kishan Kaul)

New Delhi.
December 04, 2017.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 6672/2017

(Arising out of impugned final judgment and order dated 29-05-2017
in CRLA No. 680/2011 passed by the High Court Of Kerala At
Ernakulam)

MAVILA SANTHOSH

Petitioner(s)

VERSUS

THE STATE OF KERALA

Respondent(s)

Date : 04-12-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J. CHELAMESWAR

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Petitioner(s) Mr. Roy Abraham,Adv.
Ms. Reena Roy,Adv.
Ms. Seema Jain,Adv.
Mr. Akhil Abraham,Adv.
Mr. Himinder Lal, AOR

For Respondent(s) Mr. C.K. Sasi,Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed, in terms of the signed order.

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

(OM PARKASH SHARMA)

AR CUM PS

(Signed order is placed on the file)

(RAJINDER KAUR)

BRANCH OFFICER