

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.483 OF 2020
(ARISING OUT OF SLP (CRL.) NO.2377 of 2020)

BABY @ THOMAS

Appellant

VERSUS

STATE OF KERALA

Respondent

O R D E R

Leave granted.

This appeal challenges the judgment and order dated 28.10.2019 passed by the High Court of Kerala at Ernakulam in Criminal Appeal No.2860 of 2008.

The case of the prosecution as culled out from the judgment under appeal was as under:

"PW5 the Sub Inspector of Police, Ulikkal Police Station, along with his police party comprising of PW1, a Police Constable of that Station, while on patrol duty on 24.10.2005 at 7.15 p.m. apprehended the accused near St. Thomas School, Manikkadavu on getting reliable information, and found him carrying a bag, which contained 64 packets of 100 ml. each of Karnataka made arrack. The contraband was seized as per Ext.P1 mahazar in the presence of independent witnesses, PW2 and PW3, who turned hostile. The accused fled from the scene of occurrence, but later surrendered at the Police Station on 27.10.2005. The contraband was produced on the very next day before the jurisdictional Magistrate together with Ext.P4 property list and Ext.P5 forwarding note. Ext.P6 chemical analysis report confirms that the sample sent for analysis contained ethyl alcohol. Ext.P7 is the inventory prepared for the seizure of the articles. After completion of the investigation, final report was laid and on the basis of the evidence adduced by the prosecution, the accused was found guilty and convicted as stated above."

The appellant was convicted for the offence punishable under Section 8(2) of the Abkari Act in Sessions Case No.402 of 2006 by the Additional Sessions Judge (*Adhoc-II*), Thalassery vide judgment dated 26.09.2008 and was sentenced to undergo rigorous imprisonment for two years and to pay fine in the sum of Rs.1 lakh, in default whereof he was directed to undergo further rigorous imprisonment for one year.

The High Court affirmed the view taken by the Trial Court and dismissed the Criminal Appeal, which decision is now presently under challenge.

While issuing notice on 08.05.2020, this Court had passed the following order:

"Delay condoned.

Issue notice confined to the question of sentence, returnable on 6.7.2020. Dasti in addition.

Pending further consideration, the petitioner shall be released on interim bail after depositing a sum of Rs.1.50 lakhs in the Trial Court. The proof of deposit shall be sufficient to release the petitioner on bail and the learned Trial Court shall pass appropriate orders."

The appellant deposited the sum as aforesaid and is presently on interim bail. It is a matter of record that the appellant has already undergone about 5 months of imprisonment.

Considering the totality of the circumstances on record, in our view, the ends of justice would be met if the fine amount is increased from Rs.1 lakh to Rs.1.50 lakhs while reducing the substantive sentence to the one already undergone by the appellant. We order accordingly.

The amount deposited in pursuance of the order dated 08.05.2020 shall be made over to the State towards fine payable by the appellant. The bail-bonds etc. furnished by the appellant stand discharged.

The appeal is allowed in aforesaid terms.

.....J.
[UDAY UMESH LALIT]

.....J.
[MOHAN M. SHANTANAGODAR]

.....J.
[VINEET SARAN]

NEW DELHI;
JULY 17, 2020

ITEM NO.20

VIRTUAL COURT NO.2

SECTION II-B

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 for Special Leave to Appeal (Cr1.) No.2377/2020

(Arising out of impugned final judgment and order dated 28-10-2019 in CRLA No.2860/2008 passed by the High Court Of Kerala At Ernakulam)

BABY @ THOMAS

Petitioner(s)

VERSUS

STATE OF KERALA

Respondent(s)

(FOR ADMISSION and I.R.; and, IA No.45320/2020 - FOR EXEMPTION FROM FILING O.T.)

Date : 17-07-2020 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR
HON'BLE MR. JUSTICE VINEET SARAN

For Petitioner(s) Mr. Jaimon Andrews, Adv.
Mr. Piyo Harold Jaimon, Adv.
Mr. Naresh Kumar, AOR

For Respondent(s) Mr. Jishnu M.L., Adv.
Ms. Priyanka Prakash, Adv.
Mr. G. Prakash, AOR

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, also stand disposed of.

(MUKESH NASA)
COURT MASTER

(PRADEEP KUMAR)
BRANCH OFFICER

(Signed Order is placed on the File)