

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 716 OF 2010
[arising out of SLP(CRL.) No. 171 of 2010]

DHARMAN

.....

APPELLANTS

VERSUS

STATE OF KERALA

.....

RESPONDENT

O R D E R

1. Leave granted.
2. The instant appeal is directed against the judgment and order dated 8th April, 2009 rendered in Criminal Appeal No. 340 of 2002 by the High Court of Kerala at Ernakulam by which the conviction and sentence of the appellant recorded under Section 55(1) of the Abkari Act has been set aside . The conviction under Section 55(a) of the said Act was maintained and was sentenced to rigorous imprisonment for one year and fine of Rs. 1 lakh and in default rigorous imprisonment for six months.
3. This Court has heard the learned counsel for the parties. In view of the concurrent findings of fact, this Court is not inclined to interfere with the conviction of the appellant recorded under Section 55(a) of the Act. However, as far as sentence is

concerned, the appellant has averred that he is a poor man and not able to pay fine of Rs. 1 lakh and therefore, the sentence imposed on him in default of fine be reduced suitably.

4. Having regard to the facts of the case and the fact that the appellant has already undergone four months of the sentence imposed on him for commission of offence under Section 55(a) of the Act and that the default sentence imposed on him be reduced as he is not in a position to pay Rs. 1 lakh fine imposed on him, this Court has heard the learned counsel for the parties.

5. The record shows that the appellant was intercepted and found transporting four bottles of 750ml each and five bottles of 180ml each of Indian Made Foreign Liquor kept in polythene bag. The fact that the appellant is poor is not disputed before this Court. The record further shows that on June 17, 2009 the appellant had donated one kidney as a result of which he frequently complains about weakness and recurrent urinary infection. Having regard to the feeble health of the appellant, this Court is of the opinion that interest of justice would be served if the appellant is sentenced to imprisonment to that which he has already undergone and default sentence imposed on him is reduced to one month for commission of offence

punishable under Section 55(a) of the Act.

6. For the foregoing reasons, the appeal partly succeeds, the conviction of the appellant under Section 55(a) of the Abkari Act is maintained. However, the appellant is sentenced to imprisonment already undergone whereas default sentence of six months imposed him is reduced to one month.

Subject to above modification, the appeal stands disposed of.

NEW DELHI
APRIL 01, 2010.

