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Crl.R.P No.636 of 2024cz cf

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

THURSDAY, THE 1<sup>ST</sup> DAY OF AUGUST 2024 / 10TH SRAVANA, 1946

CRL.REV.PET NO. 636 OF 2024

CRIME NO.49/2020 OF THODUPUZHA EXCISE RANGE OFFICE, IDUKKI  
AGAINST THE ORDER/JUDGMENT DATED 11.06.2024 IN CRA NO.30 OF  
2024 OF DISTRICT COURT & SESSIONS COURT, THODUPUZHA ARISING  
OUT OF THE ORDER/JUDGMENT DATED 28.12.2023 IN CC NO.722 OF  
2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I (FOREST  
OFFENCES), THODUPUZHA

REVISION PETITIONERS/APPELLANTS/ACCUSED:

- 1 SALIM, AGED 52 YEARS,  
S/O. ALI SAHIB, SITHARA MANZIL HOUSE,  
ALATHOOR KARA, ALATHOOR VILLAGE, ALATHOOR TALUK,  
PALAKKAD, PIN - 678541
- 2 DEMIS ABRAHAM, AGED 49 YEARS,  
S/O. ABRAHAM JOSEPH, PULIMOOTTIL HOUSE, KOLANI  
KARA, THODUPUZHA VILLAGE, IDUKKI DISTRICT,  
PIN - 685608
- 3 DANI ABRAHAM, AGED 46 YEARS,  
S/O. ABRAHAM JOSEPH, PULIMOOTTIL HOUSE, KOLANI  
KARA, THODUPUZHA VILLAGE, IDUKKI DISTRICT, PIN -  
685608

BY ADVS.  
D.KISHORE  
MEERA GOPINATH  
R.MURALEEKRISHNAN (MALAKKARA)

RESPONDENTS/RESPONDENT/STATE & COMPLAINANT:

- 1 STATE OF KERALA,  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, PIN - 682031.



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2 THE EXCISE RANGE OFFICER,  
THODUPUZHA EXCISE RANGE OFFICE,  
IDUKKI DISTRICT, PIN - 685584

BY ADV  
SRI.G.SUDHEER, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR  
ADMISSION ON 01.08.2024, THE COURT ON THE SAME DAY PASSED  
THE FOLLOWING:



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**K.BABU, J.**

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**Criminal.R.P No.636 of 2024**  
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Dated this the 1<sup>st</sup> day of August, 2024

**ORDER**

The revision petitioners are accused Nos.1 to 3 in C.C No.722/2021 on the file of the Judicial First Class Magistrate Court-I, Thodupuzha. They are alleged to have committed the offence under Section 56(b) of the Kerala Abkari Act.

2. The Excise Inspector, Excise Range Office, Thodupuzha registered the above crime alleging that on 25.10.2020 at 08.20 p.m., revision petitioners were found to be in possession of 1.300 litres of beer in violation of the provisions of the Abkari Act. The Excise Inspector submitted the final report before the Trial Court. The learned Magistrate took cognizance of the offence and issued summons to the revision petitioners. They appeared before the Court and pleaded guilty to the particulars of the offence read over. The Trial Court convicted the revision petitioners and sentenced them to pay a fine of Rs.5,000/- each for the offence under Section 56(b) of the Act. The revision petitioners challenged the conviction



and sentence before the Sessions Court, Thodupuzha by filing Crl.A No.30/2024 contending that they could not understand the consequence of their plea. The Sessions Court repelled their contentions and dismissed the appeal as not maintainable. The Revision Petitioners challenge the concurrent findings rendered by the Trial Court in this criminal revision.

3. When the matter was taken up for hearing, the revision petitioners filed Crl.M.A No.2/2024 seeking permission to compound the offence as provided in Section 67A(2) of the Abkari Act. This Court granted permission to the petitioners to approach the competent authority and make an application seeking composition. The Revision Petitioners approached the Deputy Excise Commissioner, Idukki. As per order dated 25.07.2024, the composition tendered by the revision petitioners was accepted by the competent authority. They remitted the compounding fee as directed by the competent authority.

4. The learned counsel for the revision petitioners submitted that the composition of the offence shall have the effect of acquittal.

5. Section 67A of the Abkari Act reads thus:



**“67A. Power to compound offences.** (1) The Commissioner of Excise or the Deputy Commissioner of Excise of the District concerned or any Abkari Officer specially empowered by the Government in this behalf by notification in the Gazette, may accept, from any person reasonably suspected of having committed any of the offences specified in column (1), a sum of money as specified in column (3) of the Table below by way of composition for the offence which may have been committed and where any property has been seized, the same shall be confiscated to Government or disposed of in such manner as may be prescribed.

**TABLE**

<i>Offence</i>	<i>Corresponding section in the Act</i>	<i>Compounding fee in rupees</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
xxx	xxx	xxx
xxx	xxx	xxx
xxx	xxx	xxx

(2) Where any case involving an offence specified under sub-section (1) is pending before a court of law, such offence may be compounded with the permission of such court and a report of the action taken thereon shall be filed before the court.

(3) On payment of such sum of money or such value or both, as the case may be, to such officer empowered for the purpose under sub-section (1), the accused person, if in custody, shall be discharged.”

6. The consequence of the composition is not mentioned in Section 67A of the Abkari Act. Sub-section (3) says that if the person accused is in custody he shall be discharged.

7. The learned counsel for the revision petitioners submitted that as per sub-section (8) of Section 320 of the Cr.PC, the



composition shall have the force of acquittal.

8. Compounding is defined in Black's Law Dictionary as follows:

"Compounding a crime: The offence of either agreeing not to prosecute a crime that one knows has been committed or agreeing to hamper the prosecution."

9. In Sri.P. Ramanatha Aiyer's the Law Lexicon (Reprint 2002 - Second Edition), compounding is defined as follows:

"Compounding felony or offence: Compounding an offence is defined to be "the offence of taking a reward for forbearing to prosecute a felony; as where the party robbed takes his goods again, or other amends upon an agreement not to prosecute."

10. The consequence of the composition is that the prosecution or affected party agrees to terminate the prosecution of the crime alleged to have been committed.

11. The principle of composition made applicable to the offences mentioned in Section 320 Cr.PC is to be necessarily extended to the composition as provided in Section 67A of the Abkari Act unless it is otherwise barred. This Court in Crl.R.P No.680/2018 had considered a similar fact situation and acquitted the accused therein consequent to the composition of the offence under Section 67A of the Abkari Act. Therefore, the conviction and



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sentence passed by the Judicial First Class Magistrate Court-I, Thodupuzha and confirmed by the Sessions Court stand set aside. The revision petitioners/accused are acquitted of the offence under Section 56(b) of the Abkari Act. .

The Criminal Revision Petition is allowed as above.

Sd/-  
**K.BABU,**  
**JUDGE**

KAS