

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

CRL.A.No. 1727 of 2003 ()

**SC 170/2001 OF ADDITIONAL SESSIONS COURT, (FAST TRACK - ADHOC-1),
ALAPPUZHA**

APPELLANT(S):

**RAJENDRAN
RAJENDRA BHAVAN,
KUNNUMMA, THAKAZHI,
ALAPPUZHA DISTRICT**

BY ADV. SRI.M.T.SURESHKUMAR

RESPONDENT(S):

**STATE OF KERALA,
REPRESENTED BY THE
EXCISE INSPECTOR, KUTTANAD EXCISE RANGE,
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM**

BY PUBLIC PROSECUTOR SRI JIBU P.THOMAS

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

SKV

K.RAMAKRISHNAN, J.

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Crl. Appeal No.1727 OF 2003

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Dated this the 28th day of September, 2015

JUDGMENT

Accused in SC No.170/2001 on the file of the Additional Sessions Court (Fast Track-I) Alappuzha is the appellant herein. The appellant was charge sheeted by the Excise Inspector, Kuttanad Excise Range in C.R.No.361/1998 under Sections 8 and 55(a) of the Abkari Act.

2. The case of the prosecution in nutshell was that on 16.11.1998 at about 5.30 pm, the accused was found to be in possession of 10 litres of arrack and found transmitting the same, carrying in a big shopper bag in violation of the provisions of the Abkari Act and thereby he had committed offence punishable under Section 8(1) read with Section 8(2) of the Abkari Act.

3. After investigation, final report was filed before the Judicial First Class Magistrate Court-I Alappuzha where it was taken on file as CP No.33/2000 and thereafter it was

committed to the Sessions Court, Alappuzha by the learned Magistrate under Section 209 of the Code of Criminal Procedure (hereinafter referred to as the Code). After committal, the Sessions Court took cognizance of the case as SC No.170/2001 and thereafter it was originally made over to Principal Sessions Court, Alappuzha for disposal. Thereafter it was withdrawn by the Sessions Judge and made over to Additional Sessions Court-(Adhoc-1), Alappuzha for disposal.

4. When the accused appeared before the court below, after hearing both sides, charge under Sections 8 (1) read with Section 8(2) of the Abkari Act was framed and the same was read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 6 were examined and Exts. P1 to P4 and MOs 1 and 2 were marked on their side. After closure of the prosecution evidence, the accused was questioned under Section 313 of the Code and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that no

incriminating article was seized from his possession. Two or three days prior to the alleged arrest the Excise officials had seized some vessels intended for manufacturing arrack from the nearby padasekharam and they enquired about the person with the accused and since he told that he was not aware of the same and he did not co-operate with the Excise officials as directed by them, he was asked to come to the Excise Office on 16.11.1998 and thereafter, he was falsely implicated in the case. Since the evidence in this case did not warrant an acquittal under Section 232 of the Code, the accused was called upon to enter on his defence by the learned Additional Sessions Judge. Dws 1 and 2 were examined on the side of the accused to prove his case. After considering the evidence on record, the court below found the appellant guilty under Section 8(1) read with Section 8(2) of the Abkari Act and convicted him thereunder and sentenced him to undergo rigorous imprisonment for two years and also to pay a fine of Rs.1,00,000/- and in default to undergo rigorous imprisonment for six months more. Set

off was allowed for a period of detention already undergone by him. Aggrieved by the same, the present appeal was preferred by the appellant/accused before the court below.

5. Heard Sri. M.T. Suresh Kumar, counsel appearing for the appellant and Shri Jibu P. Thomas learned Public Prosecutor appearing for the State.

6. The counsel for the appellant submitted that no arrest memo was produced, further two witnesses were examined on the side of the accused to prove that he was not arrested from the spot as claimed. Further the nature of seal used for sealing the article was not mentioned in Extt.P1 mahazar. The independent witnesses examined did not support the case of the prosecution. All these things probabalise the case of the accused that he was not arrested as claimed by the prosecution and this has not been properly appreciated by the court below and he is entitled to get acquittal. He had also submitted that if for any reason this court is not inclined to interfere with the conviction, the sentence imposed is harsh and he prayed

for leniency.

7. On the other hand, the learned Public Prosecutor submitted that PW1 had admitted the signature in Ext.P1 and PWs 2 and 3 have stated that they knew the accused and that was the reason why they are not supporting the prosecution. Though PWs 4 and 5 were cross examined at length nothing was brought out to discredit their evidence regarding the arrest and seizure. There was no delay in producing the article. The court below was perfectly justified in disbelieving DWs 1 and 2 on the aspect for which they were examined and rightly convicted the accused for the offence alleged.

8. The case of the prosecution as emerged from the prosecution witnesses was as follows:

On 15.11.1998 at about 5.30 pm, while PW4 along with PW5 and others were doing patrol duty and when they reached near the place of occurrence, they saw the accused coming with MO2 big shopper bag and on seeing the Excise party, he got perplexed and tried to run away from the place. He stopped him and on verification of the

big shopper bag it contained MO1 cannas having 10 litres capacity with full of liquid. On examination of the liquid PW4 was convinced that it was arrack and he convinced the same to the witnesses present and the official present as well. Thereafter he had taken 300 ml. sample from the liquid in a 375 ml. bottle and sealed the same and labelled the same containing the signatures of himself, the witnesses and accused. He had sealed and labelled the MO1 cannas also in the same fashion. He affixed the label on the big shopper bag as well. Thereafter he seized the same as per Ext.P1 mahazar in the presence of PW1 and another. He came to Excise office and entrusted the accused and contraband article and documents prepared to PW6 who registered Ext.P2 occurrence report against the accused as CRNo.36/1998 under Section 8 and 55(a) of Abkari Act. Thereafter he conducted investigation. He prepared Ext.P3 Thondi list and produced the contraband articles before the court with a request to send the sample to the chemical analysis laboratory for analysis. He had produced the accused before the court along with the

remand report and he was remanded to custody. On the basis of requisition given by him, the sample was sent for examination and Ext.P4 chemical analysis report obtained. He completed the investigation and submitted final report.

9. PW1 is the attester to Ext.P1 mahazar. PWs 2 and 3 are neighbours and known to the accused as well. They were examined for the purpose of proving the arrest and seizure of MOs 1 and 2 from the possession of the accused. Though PW1 had admitted his signature in Ext.P1, he had denied having seen the seizure and arrest of the accused. He had admitted that he had signed the mahazar from near the place of occurrence. But according to him he signed blank white paper. PWs 2 and 3 also admitted that they were neighbours of the accused and they have not seen the incident, but later they came to understand that he was arrested in connection with the Abkari Case. They have no case that the accused was falsely implicated the case and he was taken to Excise office as claimed by DWs1 and 2. DWs1 and 2 were examined on the side of the accused to prove that they

were also neighbours of the accused and on 15.11.1998 the Excise Officials found some contraband articles from the nearby padasekharam in an abandoned stage. Later, it was revealed that the Excise Officials wanted the accused to come to their office and thereafter he was not sent back and his wife and children came and informed him. Accordingly he went to the Assistant Commissioner's Office and enquired about them and they told that he was taken to court. DW1 had admitted that he is a social worker and he is a political worker as well. In spite of that he did not make any enquiry regarding the reason for arrest of the accused. He had also stated that he did not enquire about the allegations made against the accused by the prosecution or he did not take pain to enquire about the genuineness of the allegations made against him as well. A political worker of that status having come to know that a person has been unnecessarily arrested, it cannot be believed that he will be keeping quiet without taking any action against such illegal arrest. Same is the case of DW2 as well. No suggestion was given to PWs 2

and 3 even on the side of the accused, though they were also neighbours of the accused and examined on the side of the prosecution to prove the seizure and arrest that he has been illegally arrested taken and kept in illegal custody for two days and thereafter he had brought before the court. The accused also had no case before the Magistrate when he was remanded that he has been illegally taken to custody and detained for two days. So all these things will go to show that the allegation of false implication has not been established by the defence.

10. PW4 is the detecting Officer he had deposed in tune with the manner in which the seizure and arrest were effected as stated in Ext.P1. He had also stated that he had affixed the seal with letters MM and he asked the accused as to whether he has got any seal and he told that he was not having any seal and he was satisfied with the seal used by the detecting officer. The evidence of PW4 was corroborated by the evidence of PW5, preventive officer as well. Merely because one of the attesting witnesses to Ext.P1 was not examined is a

ground for acquittal of the accused. Apart from one of the witnesses to Ext.P1 two independent witnesses were examined on the side of the prosecution to prove the seizure and arrest, but they did not support the case of the prosecution.

11. It is settled law that merely because independent witnesses to seizure did not support the case of the prosecution is not a ground to disbelieve the seizure and the prosecution case itself. If the court is satisfied with the evidence given by the official witnesses, there is nothing wrong for the court to rely on the same for proving the prosecution case and base conviction on that basis . There is no ill will brought out in the evidence of PWs4 and 5 for falsely implicating the accused as well. So under the circumstances, the court below was perfectly justified in coming to the conclusion that the case put forwarded by the accused that he has been falsely implicated in the case is not believable and rightly believing the evidence of PWs4 and 5 on that aspect and rightly came to the conclusion that the prosecution has

proved beyond reasonable doubt and MOs1 and 2 were seized from the possession of the accused with liquid having a quantity of 10 litres which according to the prosecution is arrack.

12. The evidence of PW6 will go to show that the contraband articles were produced before the court on the next day itself and it was verified and taken by the court which is evident from Ext.P3 property list. PW4 had stated in evidence that portion of MM seal used by him was visible in the kannas. It is true that the label is not available on the kannas as the evidence was taken after 3 years of the alleged seizure. So the possibility of destruction of label cannot be ruled out that cannot be taken as a ground for doubting the genuineness of the articles produced, especially when the articles were produced before the court without delay, on the next day itself, by the investigating officer to whom it was entrusted. Ext.P4 chemical analysis report will show that the sample contained 42.11% volume of ethyle alcohol which is different from the standard for the arrack. The

accused had no case that the article seized was not arrack. But his case was that the arrack seized from the padasekharam was misused and he has been falsely implicated in the case. So under the circumstances prosecution has established beyond reasonable doubt that the accused was found to be in possession of arrack which is an offence punishable under Section 8(1) read with Section 8(2) of the Abkari Act and rightly convicted him for the said offence and the finding does not call for any interference.

13. As far as the sentence is concerned, the court below had sentenced him to undergo rigorous imprisonment for two years and also to pay a fine of Rs.1,00,000/- in default to undergo rigorous imprisonment for six months more. Set off was allowed for a period of detention already undergone by him under Section 428 of the Code.

14. The persons who are committing offences under the Abkari Act are doing the same knowing that what they were doing is wrong and also ignoring the impact of their

act on the innocent persons who are consuming arrack that is being sold by them. Showing undue leniency in such cases will only give a wrong signal to the persons who are committing such offences. But in this case, the prosecution had no case that the accused had involved in any other crime of similar nature earlier. Further he was aged only 42 years at the time of commission of offence. So considering the circumstances, this court feels that some leniency can be shown in the substantive sentence as the court below had already imposed the minimum fine of Rs.1,00,000/- with default sentence of six months rigorous imprisonment. So the substantive sentence is reduced to nine months rigorous imprisonment. So the sentence is modified as follows:

The appellant is sentenced to undergo rigorous imprisonment for nine months and also to pay a fine of Rs.1,00,000/-, in default to undergo rigorous imprisonment for six months more. Set off is allowed for a period of detention already undergone by him.

In the result the appeal is allowed in part. The order of conviction passed by the court below and also the sentence of fine with default sentence are hereby confirmed. But the substantive sentence of two years rigorous imprisonment by the court below is set aside and the same is modified as follows:-

The appellant is sentenced to undergo rigorous imprisonment for nine months and also to pay a fine of Rs.1,00,000/-, in default to undergo rigorous imprisonment for six months more. Set off is allowed for a period of detention already undergone by him.

With the above modifications in the sentence alone, the appeal is allowed in part and disposed of accordingly

Office is directed to communicate this order to the concerned court immediately.

Sd/-

K.RAMAKRISHNAN, JUDGE

SKV