

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA,
1937

CRL.A.No. 10 of 2006 ()

AGAINST THE JUDGMENT IN SC 341/2004 of ADDITIONAL SESSIONS
COURT (ADHOC-I), THODUPUZHA.

APPELLANT(S)/ACCUSED:

SHAJI, S/O.JOSEPH, AGED 37 YEARS,
PAYYALUMURIYIL THAMASOM, 6TH MILE BHAGOM,
CHAKKUPALLAM KARA, CHAKKUPALLAM VILLAGE,
IDUKKI DIST.

BY ADVS.SRI.C.J.JOY
SRI.V.J.JAMES

RESPONDENT(S)/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE, KUMALY,
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SMT. LILLY LESLIE.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
26-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 10 of 2006

Dated this the 26th day of November, 2015.

JUDGMENT

The accused was prosecuted for the offences punishable under Sections 55(a) and (b) of the Abkari Act. However, charge framed by the court below was only for offence under Section 55(a) of the Abkari Act. After trial, he was found guilty of the same and he was convicted and sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.1,00,000/–, in default, to undergo simple imprisonment for three months.

2. The incident occurred on 11.9.2002. P.W.5 was the Sub Inspector of Police, Kumili. While he was on law and order duty, coming to know about the sale of liquor in a tea shop of one Shaji, he prepared search memo and reached the shop and there they saw one Pappy was being served with liquor by the accused. Seeing the police officer, accused closed the bottle and threw away the same through the

ventilation. Accused was arrested. The bottle which was seized found to contain 600ml of liquid and by taste and smell, it was found to be liquor. Two samples of 180 ml were taken and the samples were sealed and labelled. The glass was also taken into custody. Search list is Ext.P1. P.W.5 affixed his personal seal on the sample and the balance contraband article. He returned to the station and registered crime as per Ext.P4. The search memo is produced as Ext.P5. The accused was produced before court. On 19.10.2002 the articles were produced before court along with the property list. P.W.5 has stated that till the properties were produced before court, they were in his custody. He prepared Ext.P7 forwarding note and obtained Ext.P8 chemical analysis report. He completed investigation and laid charge before court.

3. The court, before which charge was laid, took cognizance of the offences. Finding that the offences are exclusively triable by a court of Sessions, the said court

committed the case to Sessions Court, Thodupuzha. The said court made over the case to Additional Sessions Court (Adhoc-I), Thodupuzha for trial and disposal.

4. The latter court, on receipt of records and on appearance of the accused, framed charge for the offence punishable under Section 55(a) of the Abkari Act. To the charge, the accused pleaded not guilty and claimed to be tried. The prosecution, therefore, had P.Ws.1 to 5 examined and had Exts.P1 to P8 marked. M.Os. 1 to 4 were identified and marked. After the close of the prosecution evidence, the accused was questioned under Section 313 Cr.P.C. He denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent. Finding that the accused could not be acquitted under Section 232 Cr.P.C., he was asked to enter on his defence. He chose to adduce no evidence.

5. The court below, solely based on the evidence of P.W.5 and contemporaneous document found the accused guilty. Conviction and sentence followed.

6. Learned counsel appearing for the appellant raised two points for consideration. According to the learned counsel, the article seized is IMFL and quantity seized is 600 ml and hence by no stretch of imagination Section 55(a) can be attracted. If Section 55(a) of the Abkari Act is not available to the prosecution since the quantity seized is permissible and within the notified quantity, thus no offence is committed. The further contention of the learned counsel for the appellant is that there is a delay of 30 days in producing the articles before court and no explanation is offered for the delay. This also affects the prosecution case.

7. These vital aspects have been omitted to be considered by the court below and that has resulted in an unmerited conviction.

8. Learned Public Prosecutor on the other hand contended that the evidence of P.W. 5 and the contemporaneous documents are sufficient in law to proceed against the accused. The contemporaneous documents gave credence to the prosecution case. At any rate, learned Public Prosecutor points out that the court below was inclined to accept the evidence of P.W.5 and there is no reason as to why this Court should interfere with the said finding.

9. The evidence regarding detection is confined to the testimony of P.W.5 alone. The three independent witnesses examined as P.Ws.1 to 3 turned hostile. It is true that the evidence of P.W.5 is available and there is contemporaneous records produced by him. It may not be proper to hold that the court shall not depend upon the evidence of the official witnesses to find the accused guilty. If the evidence of the officer concerned is found to be above board, without blemish, convincing, cogent and inspires

confidence in the mind of court, there is no reason for rejecting the same.

10. The question then what is the offence, if any, committed by the accused. Of course, Section 55(a) of the Abkari Act can have no application since possession of the contraband article was neither for export or import as made mention of in Section 55(a) of the Abkari Act. Then the question is whether Section 63 of the Abkari Act applies. It is brought to the notice of this Court that at the relevant time a person can possess only 1.5 litres. The quantity seized in this case is only 600 ml. If that be so, no offence has been committed by the accused. For the above reason, this Court is unable to agree with the trial court and finds that the accused is not guilty of the offence alleged against him.

For the above reasons, this appeal is allowed, the conviction and sentence passed by the trial court are set aside and it is held that the prosecution has not succeeded in

proving the guilt of the accused beyond reasonable doubt.
The accused is acquitted of the charges levelled against him.
His bail bond shall stand cancelled and he is set at liberty.

P. BHAVADASAN,
JUDGE

sb.