

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

CRL.A.No.37 of 2006

AGAINST THE JUDGMENT IN SC 311/2005 of ADDITIONAL SESSIONS
COURT, THRISSUR (FAST TRACK-II-ADHOC) DATED 14.12.2005

APPELLANT/ACCUSED:

RAJAN @ SURESHKUMAR, S/O.KARIMBAN,
KEERTHY HOUSE, PALAPPURAM VILLAGE,
PALLARMANGALAM DESOM, OTTAPPALAM TALUK.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENT/COMPLAINANT-STATE:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY SMT. S. HYMA, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.37 OF 2006

Dated this the 13th day of October, 2015.

J U D G M E N T

The accused was prosecuted for the offence punishable under Section 8(2) of Abkari Act. He was found guilty and was therefore convicted and sentenced to suffer simple imprisonment for six months and to pay a fine of Rs.1 lakh with default clause of simple imprisonment for one month.

2. Incident in this case occurred on 08.10.2003. On that day, PW1, PW2 and other officers were on patrol duty and when they reached in front of the house of one Narayanan Ezhuthachan, they happened to see the accused coming from north to south carrying a plastic can with him. On seeing the Excise Officers, he became jittery and tried to escape. He was intercepted and in the presence of two witnesses who had come along that way, can was seized and the contents were examined. The 5 litres capacity can contained 3 litres of liquid. By taste and smell, it was realised that the liquid contained in the can is

arrack. The accused was arrested immediately. PW1 took sample from the can and both the sample as well as the can were sealed and labeled. PW1 prepared Ext.P1 seizure mahazar and also the arrest memo, body inspection report and arrest notice which are marked as Exts.P2 to P4. He then says that he along with other officers returned to the Excise Range Office and entrusted the articles and the accused to the Excise Range Inspector in charge of the Station. PW6 was the then Excise Range Inspector. He received the articles, accused and the documents and he prepared the occurrence report as per Ext.P6. On the very next day, he had the accused and the articles produced before court. The remand report is marked as Ext.P7 and the property list is Ext.P8. He went to the place of occurrence and prepared Ext.P9 scene mahazar. He recorded the statement of witnesses. He had the forwarding note prepared and sent to the court as per Ext.P11 and the chemical analysis report received is Ext.P12. He completed the investigation and laid charge before court.

3. The court before which charge was laid took cognizance

of the offence and finding that the offence is exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Thrissur under Section 209 Cr.P.C. The said court made over the case to Additional Sessions Court (Fast Track-II- Adhoc), Thrissur for trial and disposal. The latter court, on receipt of records and on appearance of the accused, framed charge for the offence under Section 8(2) of Abkari Act. To the charge, accused pleaded not guilty and claimed to be tried. The prosecution therefore had PWs 1 to 6 examined and Exts.P1 to P12 marked. M.O.1 was got identified and marked.

4. After the close of the prosecution evidence, 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. He added that on the previous day, there was a raid conducted by the Excise Officials and the real culprits ran away from the place and suspecting him to be one among them, he was taken into custody.

5. 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.

6. The court below, presumably impressed by the evidence of PWs 1, 2 and 6 and also the contemporaneous document namely, Ext.P1 and also the fact that the accused, article and the documents were promptly produced before court on the very next day formed the opinion that the prosecution has succeeded in establishing the case against the accused and found him guilty. The conviction and sentence as already mentioned followed.

7. Assailing the conviction and sentence, learned counsel appearing for the appellant contended that there is no independent evidence to establish the guilt of the accused. It may be precarious for the court to solely rely on the evidence of Excise Officers to find the accused guilty. They are interested witnesses. It is further contended that PW6 says about having prepared forwarding note for producing the article before court on 09.10.2003. But it is evident that the same reached the laboratory only on 21.10.2003. There is no guarantee, according to the learned counsel, to show that the sample which reached the laboratory was the sample which was taken from the article

seized from the possession of the accused. Unless that link is established, the accused could not be found guilty. For the said proposition, learned counsel relied on the decision in **Sasidharan vs. State of Kerala** (2007 (1) KLT 720).

8. Learned Public Prosecutor, on the other hand, contended that the decision cited above has no application to the facts of the case. That was a case where sample was taken from the court and the thondi clerk who was taken sample was not examined. It was in that context held that there was want of evidence. In the case on hand, there is no such crisis for the simple reason that PW1 has specifically stated that it was he who had taken sample and sealed and labeled the same. PW6 had forwarded the sample to the court with a forwarding note containing the specimen seal. The report shows that the articles reached the laboratory contained the same seal. It is therefore contended that there is no merit in the contention raised by the learned counsel for the appellant. According to the learned Public Prosecutor, court below has analysed the evidence in considerable detail and there are no grounds made out to

interfere with the conviction and sentence passed by the court below.

9. The evidence regarding detection, as rightly pointed out by the learned counsel for the appellant, remains confined to PWs 1 and 2 Excise Officers. The two independent witnesses namely, PWs 3 and 4 turned hostile to the prosecution as usual. It is not the law that evidence of Excise Officers will have to be necessarily corroborated before a finding of guilt is entered into. If the evidence of the Police Officers is found to be cogent and convincing, there is no reason as to why it should not be acted upon. In the case on hand, PWs 1 and 2 give a uniform version about the incident. They say about having gone for patrol duty and having found the accused carrying a can. They uniformly say about seizure, returning to the Station with the article, documents and the accused. Even though both of them were cross examined at length, no inconsistency could be pointed out in their evidence. There is no suggestion that they had any ill motive to falsely implicate the accused. In the absence of any reason to suspect their evidence, their evidence should not be

discarded. PW6 has stated that the persons who reside nearby have not been cited or examined.

10. It is true that the two independent witnesses namely, PWs 3 and 4 turned hostile. It is not as if the prosecution did not attend the independent witnesses. PW4 admitted his signature on Ext.P1 mahazar though he denied of having seen the search and seizure. The same is the evidence furnished by PW3 also. He admitted his signature on Ext.P1 but denies of having seen the search and seizure.

11. It is not as if there is no corroborative evidence to support the testimony given by PWs 1 and 2. Ext.P1, contemporaneous document prepared by PW1, contains the entire details regarding detection and other procedures done by PW1. Further, prompt production of the accused, articles and the documents strengthens the prosecution case.

12. The court below was therefore perfectly justified in coming to the conclusion that the prosecution, based on the evidence made mentioned above, had succeeded in establishing the case against the accused. The said finding does not call for

any interference. The conviction has to stand.

13. Faced with the above situation, learned counsel appearing for the appellant prayed for leniency regarding sentence. It is pointed out that there is no history of the accused having indulged in such nefarious activities and therefore he should be given an opportunity to reform himself.

14. Having taken note of the quantity seized, it is felt that the sentence imposed is slightly on the higher side and not commensurate to the offence.

In the result, while sustaining the conviction for the offence under Section 8(2) of Abkari Act, the sentence awarded by the court below is set aside and instead the accused is sentenced to suffer simple imprisonment for one month and to pay a fine of Rs.1 lakh in default of payment of which to suffer simple imprisonment for 15 days. Set off as per law is allowed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A. to Judge.