

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

CRL.A.No. 128 of 2006 ()

**AGAINST THE JUDGMENT IN SC 22/2002 of ADDITIONAL SESSIONS COURT (ADHOC)-
II, KALPETTA DATED 22-12-2005**

APPELLANT(S)/ACCUSED:

**SASI, S/O.KARUPPAN,
THANATTUMALIL HOUSE, PADAMALA, PAYYAMPILLY P.O.**

**BY ADVS.SRI.GRASHIOUS KURIAKOSE (SR.)
SRI.K.C.SANTHOSHKUMAR**

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT. LILLY LESLIE

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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P.BHAVADASAN, J.

Crl.A. No. 128 of 2006

Dated this the 20th day of November, 2015

J U D G M E N T

The accused in this case was prosecuted for the offence punishable under Section 55(a) of the Abkari Act. He was found guilty. He was therefore convicted and sentenced to suffer simple imprisonment for one year and to pay a fine of ₹1 lakh with a default clause of three months. Set off as per law was allowed.

2. As per the prosecution version, on 22.03.1999 PW3 was functioning as the Sub Inspector of Police at Thirunelly Police Station. He as usual set out for patrol duty on that day also. On the way, he found a person coming along the road carrying a plastic cover and he became nervous seeing the Excise Officials. Feeling suspicious he was intercepted and the article was seized. 25 packets of Karnataka made liquor of 100 ml each were recovered. The accused was arrested from the place of occurrence. Samples were taken from the contraband seized. The

samples were sealed and labelled and so also the balance contraband articles. Seizure mahazar prepared by PW4 is marked as Ext.P2. PW5 took over investigation of the case. He visited the place of occurrence and produced Ext.P1 scene mahazar. He had taken the statements of witnesses. He sent the forwarding note to court to send the sample for chemical examination. Ext.P6 is the forwarding note. Report was received. Investigation was completed by his successor in office who laid charge before court.

3. The court before which the final report was laid, took cognizance of the offence and finding the offence to be exclusively triable by a Court of Sessions, committed the case to Sessions Court, Kalpetta under Section 209 of Cr.P.C. after following the necessary procedures. The said court made over the case to Additional Sessions Court (Adhoc)-II, Kalpetta, for trial and disposal.

4. The latter court, on receipt of records and appearance of the accused before the said court, framed

charge for the offence punishable under Section 55(a) of the Abkari Act.

5. To the charge the accused pleaded not guilty and claimed to be tried. The prosecution therefore had PWs 1 to 6 examined and had Exts.P1 to P6 marked. MOs 1 to 3 were got identified and marked. From the defence side, Exts.D1 and D2 were marked.

6. After the close of 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. He stated that he has been falsely implicated.

7. Finding that he could not be acquitted under Section 232 Cr.P.C., he was asked to enter on his defence. He chose to adduce no evidence.

8. Presumably based on the evidence of PWs 3 and 4, the court below came to the conclusion that the offence had been made out and conviction and sentence followed.

9. The learned counsel for the appellant assailing the conviction and sentence raised two main points for consideration. They are four days delay in producing the seized articles before court and the explanation offered is not at all satisfactory. If that be so, going by the decision reported in **Ramankutty v. Excise Inspector, Chelannur Range** (2013 (3) KHC 308), delay should prove fatal to the prosecution. It is also pointed out that as per the provisions of the Act, the search, seizure etc. will have to be done in the presence of two independent witnesses. In the case on hand, there is only one independent witness and the other witness to the mahazar is an officer who had accompanied the detecting officer's team. Therefore, there is a violation of statutory provision.

10. The learned Public Prosecutor pointed out that it is clear from the evidence of PWs 3 and 4 that the contraband was seized from the possession of the accused. The court below has chosen to accept their evidence and has found

the accused guilty. There is no reason for this Court to take a different view.

11. The evidence regarding the detection and seizure of the contraband article remained confined to PWs 3 and 4, among them PW3 is the Senior Officer and he was functioning as the Sub Inspector of Thirunelli Police Station on the relevant date. Both of them would say that as usual, on 22.03.1999 also, they set out for patrol duty and they happened to come across the accused on the road carrying a plastic cover. As the explanation offered by the accused was not satisfactory, the cover was seized and on opening the same, it was found to contain small packets of 100ml of liquid. He would say that on being convinced that it was arrack, he took samples from the same. He opened three packets and poured the contents therein to a bottle having a capacity of 375ml. He took three such samples. He asserts that in all the samples, he had affixed his seal and signature and also the witnesses. He speaks about having prepared

Ext.P2 mahazar.

12. As already stated, PW3 gets sufficient support from the evidence of PW4, who had accompanied PW3 in the raid. It is not necessary to independently refer to the evidence of PW4 for the simple reason that it is quite in tune with the evidence of PW3. Finding therefore that the article was seized from the possession of the accused stands proved.

13. However, one cannot omit to note that the date of detection is 22.03.1999 whereas, the contraband article was produced before court on 26.03.1999. Except for saying that it was kept for Investigating officer to have a perusal, no satisfactory explanation is offered for delay in producing the articles before court. In the decision reported in **Ramankutty v. Excise Inspector, Chelannur Range** (2013 (3) KHC 308), it was held that unexplained delay in producing the contraband before the court after seizure is fatal to prosecution case.

14. If that be the law, surely, the reasoning given in the present case for the delay cannot be accepted.

15. The contention that the statute insists for two independent witnesses cannot be given a go by. Admittedly, in the case on hand, there is only one independent witness to Ext.P2 mahazar and the other witness is one among the police party who had gone on patrol duty. Thus, there is a violation of that provision also. In the light of these infirmities, it will be hazardous to venture a finding of guilt against the accused.

For the above reasons, this appeal is allowed. The conviction and sentence passed by the court below are set aside and the accused stands acquitted of all charges levelled against him. His bail bond shall stand cancelled and he is set at liberty.

Sd/-
P.BHAVADASAN
JUDGE

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P.A. to Judge