

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

CRL.A.No. 139 of 2006

AGAINST THE JUDGMENT IN SC 67/2005 of ADDL. SESSIONS COURT
(ADHOC)-II, KALPETTA DATED 20-12-2005

APPELLANT/ACCUSED:

LAKSHMI, W/O.KUNHAN,
MALAYACHAMKOLLI HOUSE, THOMATTUCHAL AMSOM, KUTTAD,
AMBALAVAYAL, WYNAD DISTRICT.

BY ADVS.SRI.V.RAJENDRAN
SRI.P.SAMSUDIN

RESPONDENT/COMPLAINANT:

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

BY SMT. MADHUBEN, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
19-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.139 OF 2006

Dated this the 19th 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 Abkari Act. She was found guilty and was therefore convicted and sentenced to suffer simple imprisonment for two years and to pay a fine of Rs.1 lakh with default clause of simple imprisonment for three months. Set off as per law was allowed.

2. The incident in this case occurred on 05.06.1998. At the relevant time, PW4 was working as Sub Inspector of Ambalavayal Police Station. On that day, he received reliable information that the accused was engaged in vending in liquor and two ladies and others restrained her from doing so and the matter was informed to the Police. On getting information, he along with PW6 Police Constable went to the place of incident. When they entered the courtyard of the house of Lakshmi, the accused, they found that she has been detained by Jessy and Valsa and several others. By

the side of Lakshmi, on the ground, one plastic bottle having a capacity of 1½ liters with a white colour liquid was seen lying. It contained about 1¼ liters of liquid. PW4 opened the bottle and by taste and smell, he identified the contents as arrack. The accused was arrested and a sample of 180ml was taken. The sample was sealed and label was affixed on the same. Mahazar was also prepared. He returned to the station and registered crime as Crime No.124/98 as per Ext.P3 First Information Report. The property list prepared by him is Ext.P4. He also filed forwarding note, Ext.P5, for sending the sample for chemical analysis.

3. PW7 took over investigation. He recorded the statement of witnesses, completed the investigation and laid charge before court.

4. 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, Kalpetta. The said court made over the case to Additional Sessions Court (Adhoc) II, Kalpetta for trial and disposal. The

latter court, on receipt of records and on appearance of accused, framed charge for the offence under Section 55(a) of Abkari Act. To the charge, accused pleaded not guilty and claimed to be tried.

5. The prosecution therefore had PWs 1 to 7 examined and Exts.P1 to P8 marked. M.O.1 was got identified and marked.

6. After the close of the prosecution evidence, accused was questioned under Section 313 Cr.P.C. She denied all the incriminating circumstances brought out in evidence against her and maintained that she is innocent. She also stated that she has been falsely implicated to wreak vengeance.

7. Finding that the accused could not be acquitted under Section 232 Cr.P.C, she was asked to enter on her defence. She chose to adduce no evidence.

8. Based on the evidence of PWs 1, 3 and 4 and also the contemporaneous document, court below came to the conclusion that the offence had been made out and therefore convicted and sentenced the accused as already mentioned.

9. Assailing the conviction and sentence, learned counsel

appearing for the appellant pointed out that Ext.P1 seizure mahazar does not narrate in detail how the sampling was done and in fact a reading of the mahazar shows as if no sample was taken. The person who takes the sample is bound to explain as to how it was taken and there is no such circumstance in this regard. It is further pointed out that there is considerable delay in producing the contraband before court and that remains unexplained. Here the detection was on 05.06.1998 and the article was produced before court only on 18.06.1998. PW4 says that he was engaged in law and order duties and that there was shortage of police officers. According to the learned counsel, the reason given for delay by PW4 cannot be accepted. Relying on the decision in **Ramankutty vs. Excise Inspector, Chelannur Range** (2013 (3) KHC 308), learned counsel contended that unexplained delay in producing the contraband before court is fatal to the prosecution.

10. Learned Public Prosecutor, on the other hand, contended that the evidence of PWs 1, 3 and 4 taken along with the contemporaneous document, Ext.P1 are sufficient to show

that the offence had been made out. At any rate, the evidence of those witnesses and the documents have been accepted by the court below and there is no reason as to why this Court should take a different view.

11. The prosecution case is that while the accused was engaged in sale of arrack, two ladies restrained her from doing so and the people gathered around the accused and they informed the matter to the Police. PW4, on getting information, went to the spot. He took the aid of PW6 and reached the house of accused. He then says that when they reached the place and entered the courtyard of the house, the accused was seen surrounded by people and a bottle was seen found lying on the ground. The bottle was found to contain 1¼ liters of liquid which he recognised as arrack by taste and smell. He then says about having taken into custody the bottle etc. and sealed and labeled the same.

12. As rightly pointed out by the learned counsel for the appellant, in the body of the mahazar, there is no mention that sample has been taken by PW4 at all. However, it simply stated

that two bottles of samples sealed and labeled was taken by PW4. Though there was failure to mention the sample in the body of mahazar, the fact that sample was taken is evident from Ext.P1. However, the other ground urged regarding delay is to be a formidable one. In the decision in **Ramankutty vs. Excise Inspector, Chelannur Range** (2013 (3) KHC 308), it was held that unexplained delay in producing the contraband before court is fatal to the prosecution. This Court is not unaware of the decision of a Division Bench of this Court that the property should be produced forthwith. That decision however says that if there is unusual delay, that should be properly explained. In the case on hand, there is 13 days delay in producing the article before court. The reason given by PW4 is that he was engaged in law and order duties. It is trite that the police officers be engaged for such duties. But nothing prevented from PW4 directing any other officer to produce the articles before court. The unexplained delay casts suspicion about the conduct of the prosecution. There is no guarantee that the sample sent for chemical analysis is the sample taken from the contraband seized from the

possession of the accused. There is no reason as to why the principles laid down in the above decision cannot be applied to the facts of the case.

13. In the light of the above fact, it is difficult to uphold the conviction and sentence passed by the court below especially due to the unreasonable and unexplained delay in producing the articles before court.

In the result, this appeal is allowed. The conviction and sentence passed by the court below are set aside and it is held that the accused is not guilty of the offence. She stands acquitted of the charges levelled against her. Her bail bond shall stand cancelled and she is set at liberty.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.