

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

CRL.A.No. 155 of 2006 ()

**AGAINST THE JUDGMENT IN SC 563/2003 of ADDITIONAL SESSIONS COURT FAST
TRACK - I, ALAPPUZHA DATED 27-10-2005**

IN CP 59/2003 OF JUDICIAL FIRST CLASS MAGISTRATE, KAYAMKULAM

APPELLANT(S)/ACCUSED:

**BHAVANI, AGED 52 YEARS,
D/O.KUTTY, MANNADAYIL HOUSE, VALLIKUNNAM MURI
VALLIKUNNAM VILLAGE, MAVELIKKARA TALUK
ALAPPEY DISTRICT.**

**BY ADVS.SRI.BASANT BALAJI
SRI.R.GOPAN**

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT. S. HYMA

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 155 of 2006

Dated this the 15th day of October, 2015

J U D G M E N T

The accused in this case was prosecuted for the offence punishable under Section 8(1) and (2) of the Abkari Act and was found guilty. She was therefore convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹1 lakh with a default clause of six months.

2. The incident in this case occurred on 29.03.2002. On that day, PW1, the Preventive Officer attached to Mavelikkara Excise Range Office along with other officers had gone on routine patrol duty. When they reached near Puthenchantha, they happened to see the accused coming along the road with a bottle in her hand. Feeling suspicious, she was intercepted and the bottle was seized. The bottle was found to contain a liquid of 750 ml. By taste and smell, it was identified as arrack. The witnesses were also

convinced that the accused was carrying arrack. Since the assistance of women constable were not available at that point of time, the accused was not arrested. A sample of 200 ml was taken in a bottle having a capacity of 375 ml and that was sealed and labelled at the spot. Ext.P1 mahazar was prepared at the spot and PW1 and the witnesses affixed their signature on Ext.P1. On the sample, the signature of PW1 and the witnesses were obtained and so also on the balance quantity. Label was affixed on MO1 also. They returned to the Range Office and entrusted the articles and the records to the Range Officer. He identified the accused in the accused dock. PW5 received the articles and the records and registered crime No.78/2002 as per Ext.P2 occurrence report. Investigation was done by him. He prepared the property list which is marked as Ext.P3. Ext.P4 is the requisition letter. He recorded the statement of witnesses and obtained the chemical analysis report as Ext.P5. After completing investigation, he laid final report

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, Alappuzha under Section 209 of Cr.P.C. after following the necessary procedures. The said court made over the case to Additional Sessions Court, Fast Track-I, Alappuzha for trial and disposal.

4. The latter court, on receipt of records and appearance of the accused before the said court, framed charges for the offence punishable under Section 8(1) and (2) 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 5 examined and had Exts.P1 to P6 marked. MO1 was got identified and marked.

6. After the close of prosecution evidence, the 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 was innocent.

7. Finding that she 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. The court below, impressed by the evidence of PWs 1 and 2 taken along with contemporaneous document namely, Ext.P1 and also the prompt production of thondi articles seized before court, found that the prosecution has succeeded in establishing the case against accused and therefore convicted and sentenced him as already mentioned.

9. Assailing the said conviction and sentence, the learned counsel appearing for the appellant pointed out that there is a glaring lacuna in Ext.P1 the mahazar alleged to have been prepared at the time of seizure. It does not mention the type of seal that was affixed on the sample and on the MO1 bottle. The learned counsel pointed out that in

the absence of any mention of that fact in Ext.P1 mahazar, the whole proceedings will have to fail. The learned counsel also pointed out that it is not specifically stated in the forwarding note as to what type of seal has been affixed. Relying on the decision reported in **Mohanan v. State of Kerala** (2014 KHC 55), the learned counsel pointed out that the above two infirmities are sufficient to vitiate the proceedings.

10. The learned Public Prosecutor on the other hand contended that all formalities have been strictly complied with in the case on hand and there is no practice of affixing the seal on the seizure mahazar by the detecting officer. Of course, in some cases, the type of seal may be mentioned. But in the case on hand, the learned Public Prosecutor stated that personal seal has been affixed. Moreover, in the forwarding note namely, Ext.P4, the sample of the seal is shown. The evidence of PWs 1 and 2 taken along with other contemporaneous documents are sufficient to show the guilt

of the accused. The learned Public Prosecutor pointed out that no grounds are made out to interfere with the conviction and sentence.

11. The detection of the case was by PW1 who was accompanied by PW2. While they were on patrol duty along with others, they happened to see a lady coming along the road with a bottle in her hand. Both of them say that she was intercepted and bottle was seized and the contents were examined. By smell and taste, they identified it as arrack. PW1 then speaks about taking samples and sealing and labelling the same and also having sealed and labelled on the bottle contained the balance quantity. He also speaks about having prepared Ext.P1 mahazar. He then returned to the Excise Range Office and entrusted the articles and the documents to the Excise Range Inspector.

12. PW5, the Excise Range Inspector has spoken about the further acts done by him and he points out that the articles and the documents handed over by PW1 were taken

into his custody and kept in his custody till they were produced before court. He speaks about having registered the crime and also taken steps for prompt production of the seized articles and documents before court.

13. The contention is that the evidence of PWs 1 and 2 do not receive corroboration at the hands of the independent witnesses who turned hostile. It is contended that therefore it will be dangerous to enter a finding solely based on the evidence of the official witnesses, who are interested witnesses to find the accused guilty.

14. There is no merit in the above contention at all. There is no rule of law that the evidence of Police Officers or other officials as the case may be, should be looked upon with suspicion. The corroboration is only a rule of prudence and not a rule of law.

15. In the case on hand, by the time PW1 detected the offence, a good part of the investigation has been completed and PW5 speaks about the balance investigation. One

cannot omit to note that Ext.P1 seizure mahazar prepared at the time of recovery contains all the details. It makes mention of the personal seal affixed by PW1 on the sample and on the MO1 though it is not stated in so many words as to what exact type seal is affixed by him. It is clear from a reading of Ext.P1 is that his personal seal was affixed and the label containing the signature of the witnesses and the detecting officer was affixed on both the sample as well as on the MO1. It needs to be noticed that the documents and the articles seized were produced before the court on the very next day itself.

16. The contention raised by the learned counsel on the basis of the decision reported in **Mohanan v. State of Kerala** (2014 KHC 55) has no legs to stand. That was a case where there was no forwarding note prepared and there was nothing to show the nature of seal that is affixed on the sample which had been sent for chemical examination. It was in that context this Court had occasion

to observe that in such cases, it is essential that the details of the seal should find a place in the forwarding note.

17. No such contingency has arisen in the case on hand. PW1 has spoken about the sampling and affixing of label on both the bottle and the sample taken. He also stated that his personal seal was affixed on Ext.P1 mahazar. It is therefore clear that the sample sent for chemical examination is the sample taken from the accused on the date of incident as spoken to by PWs 1 and 2.

18. The court below has analyzed the evidence in considerable detail and has found the accused guilty of the offence levelled against him.

19. The learned counsel for the appellant then contended that considering the quantity of article seized and age of the accused, the sentence imposed is very harsh and some leniency may be shown. Ten years have elapsed since the incident occurred. These facts may kindly be taken into consideration while awarding sentence.

20. There seems to be considerable force in the above submission made by the learned counsel for the appellant. In the case on hand, the quantity of contraband article seized is only 750 ml. Though the offence is of a grave category, the fact remains that the quantity seized is very negligible.

21. Though the learned counsel for the appellant relied on the decision reported **State of Kerala v. Padmanabhan Nair** (1981 KLT SN 20), wherein, it was held that persons who are convicted for the offences under the Act can be released on probation, the very same decision says about the precautions that is to be taken in such cases. It is also clear from a reading of said decision that Probation of Offenders Act is not readily to be invoked.

22. Considering the various aspects, this Court finds it inappropriate to apply the Probation of Offenders Act. However, it is also noticed that the sentence imposed is on the very high side.

Thus, while confirming the conviction for the offence mentioned in the charge, the sentence imposed by the court below is set aside and instead, the accused is sentenced to suffer simple imprisonment for a period of fifteen days (15) and to pay a fine of ₹1 lakh, in default of payment of which, he is to suffer simple imprisonment for a period of one month. Set off as per law will be allowed.

Sd/-
P.BHAVADASAN
JUDGE

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P.A. to Judge