

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.165 of 2006 (F)

AGAINST THE JUDGMENT IN SC 662/2001 of ADDL.SESIONS COURT
(ADHOC)-III, THALASSERY DATED 16-12-2005

APPELLANT/ACCUSED:

K.V. MANI, S/O. APPU,
KAMBIVELIKKAL, CHAVASSERY AMSOM, VALIYAMBRA DESOM.

BY SRI.GRASHIOUS KURIAKOSE, SENIOR ADVOCATE.

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REP. BY THE
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.165 OF 2006

Dated this the 13th day of October, 2015.

J U D G M E N T

The accused was prosecuted for the offences punishable under Sections 55(a) and 8(1) of Abkari Act. He was found guilty on both counts and was therefore convicted and sentenced to suffer rigorous imprisonment for six months 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. Incident in this case occurred on 07.07.2000. According to PW1, who was the Preventive Officer at Mattannur Excise Range office at the relevant time, he and a colleague officer were on patrol duty on that day and they happened to see the accused coming along the way carrying a can in his right hand. Seeing the Excise Officials he tried to escape which was prevented and the can was seized from his possession. The can was having a capacity of 2½ litres and it was full of liquid. PW1 identified the

liquid as arrack by smell and taste and he prepared Ext.P1 arrest memo and arrested the accused. He took 200 ml as sample in a bottle of 375 ml and sealed and labeled the sample, can and the balance arrack. The label contained his, witnesses as well as the signature of the accused. He prepared Ext.P2 mahazar. He then returned to the Excise Range Office along with the accused, documents and material and handed over the same to the Excise Range Inspector. The said Excise Range Inspector, who is no more, had prepared Ext.P3 occurrence report and the thondi articles were produced before court as per Ext.P4. He also prepared forwarding note, Ext.P5 to send the sample for chemical analysis and obtained Ext.P6 report. After completing the investigation, final report was laid.

3. The court before which final report 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, Thalassery under Section 209 Cr.P.C. The said court made over the case to Additional Sessions Court Adhoc - III, Thalassery for trial and disposal. The latter

court, on receipt of records and on appearance of the accused, framed charge for the offences punishable under Sections 55(a) and 8(1) of Abkari Act, to which, the accused pleaded not guilty and claimed to be tried.

4. The prosecution, therefore, had PWs 1 and 2 examined and Exts.P1 to P6 marked. M.O.1 was also got identified and marked.

5. After the close of the prosecution evidence, accused was questioned under Section 313 Cr.P.C wherein he denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent.

6. 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.

7. Mainly based on the evidence of PW1 taken along with Ext.P2 mahazar, court below found that the offence has been established by the prosecution. Therefore, the accused was found guilty. The conviction and sentence as already mentioned followed.

8. Sri.Grashious Kuriakose, learned Senior Counsel appearing for the appellant, assailing the conviction and sentence, pointed out that there is no corroborative evidence to support the testimony furnished by PW1. Even going by Ext.P2 and also the testimony of PW1, there were other officers along with PW1 at the relevant time of detection. For reasons best known to the prosecution, none of them was examined and the prosecution solely rests on the evidence of PW1. It will be extremely hazardous to place implicit faith on the solitary evidence of PW1 to hold that the accused is guilty especially when the prosecution has named another officer who was one of the officers of the patrolling party and shown as witness in the final report. For reasons best known to the prosecution, he was not examined. Learned counsel also pointed out that the occurrence report, forwarding note and property list are prepared by an Excise Range Inspector and final report was also laid by him and that Inspector was no more. The act done by the said officer is spoken to by PW1. Surprisingly enough, PW1 does not identify the signature of the said officer in any of the documents.

This is fatal to the prosecution. It is also pointed out that there is no mention of the type of seal affixed on the sample showing that the sample produced in court is the sample taken from the can which is seized from the possession of the accused. These aspects have been omitted to be noticed by the court below and it is contended that the conviction and sentence cannot stand.

9. Learned Public Prosecutor, on the other hand, contended that the evidence of PW1 is clinching and cogent and there is no reason to doubt his version. The contemporaneous document namely, Ext.P2 contains all the details and the court below was justified in accepting those items of evidence to find the accused guilty. No grounds are made out to interfere with the conviction and sentence.

10. It is not the law that the evidence of the investigating officer cannot be accepted without corroboration. If the evidence of the detecting officer is found to be above board, there is no need for any corroboration. It is not a case where there is no other witness to speak about the detection. The evidence of PW1 is to the effect that he along with his colleagues had gone for

patrol duty. It means that there were other persons with him at the time of detection. One is unable to understand why the prosecution felt shy to examine any one of the officers who had with PW1 at the time of detection. Ext.P2 mahazar contains all the details of what had transpired and as rightly pointed out by the learned counsel for the appellant, the type of seal affixed on the label and the sample is not seen mentioned. There may be some substance in the contention that there is no guarantee that the sample forwarded is the sample taken from the spot and from the can alleged to have been carried by the accused. Further, investigating officer is a different person. The evidence of PW1 is to the effect that after the offence was detected, accused, material and records were taken to the Station and entrusted to Excise Range Inspector. Even though PW1 speaks about the acts done by the said officer, surprisingly enough, he does not say that he is conversant with the signature of the said officer namely, Gopalan and the signature found on the occurrence report, forwarding note and property list are that of the said officer. In short, there is no identification of the person who had

prepared the above documents.

11. Under the above circumstances, it is extremely precarious to find the accused guilty. It is not a case where the prosecution was handicapped for want of evidence in the case. As rightly pointed out, PW1 had gone along with other officers for patrol duty and they happened to detect the offence. Any one of these officers should have been examined. If that be so, there may be some sort of guarantee in the testimony of PW1.

12. True, court below has chosen to believe the evidence of PW1 and held the accused guilty. In the light of the fact that the prosecution did not adduce corroborative items of evidence, it becomes dangerous to base conviction solely on the basis of the testimony furnished by PW1 especially when he has not stated about the type of seal affixed on the sample and the balance liquid contained in the can.

For the above reasons, this Court is unable to uphold the conviction and sentence passed by the court below. The appeal is allowed and the conviction and sentence passed by the court below are set aside. It is held that the accused is not guilty of

the offence. His bail bond shall stand cancelled and he is set at liberty.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.