

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

CRL.A.No.183 of 2006

AGAINST THE JUDGMENT IN SC 369/2004 of ADDITIONAL SESSIONS
(ADHOC-I), THODUPUZHA DATED 02-01-2006

APPELLANT/ACCUSED NO.1:

BASIN JOSEPH, S/O.BANADIC,
KENETH HOUSE, THRIPOONITHURA VILLAGE,
PALARIVATTOM SOUTH KARA, NOW RESIDING AT
PARACHERUVIL VELLAYAN'S HOUSE, ERATTAYAR KARA.

BY ADVS.SRI.C.M.TOMY
SRI.MATHEW SKARIA

RESPONDENT/COMPLAINANT:

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
22-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.183 OF 2006

Dated this the 22nd day of December, 2015.

J U D G M E N T

Two persons were prosecuted for the offence punishable under Sections 8(1) and (2) and 55(a) and (i) of Abkari Act. Among them, 1st accused was found guilty and the 2nd accused was acquitted. The 1st accused was convicted and sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.1 lakh with default clause of simple imprisonment for three months.

2. The incident which gave rise to the case occurred on 02.09.2001. PW4 was the Sub Inspector of Kattappana Police Station during the relevant period. PW3 was the Constable of the same station. On that day, at about 5 p.m, they received reliable information that the accused is engaged in sale of arrack in a particular place. They went to the place. They saw three persons and one of them was carrying a big shopper. Seeing the Police Officers, one of them ran away leaving the big shopper.

He was apprehended and the big shopper was seized and its contents were examined. It contained a glass having smell of arrack, and a can of 10 litre capacity. The can contained about 5 litres of liquid. By taste and smell, the liquid was identified as arrack. The sample taken was sealed and labeled and the label contained the signature of accused, witnesses and PW4. Similarly, the can was also sealed and labeled and the label contained the signature of accused, witnesses and PW4. Few currency notes were also recovered from the possession of accused. PW4 prepared the forwarding note, Ext.P4 for sending the sample for chemical analysis. He thereafter obtained Ext.P5 chemical analysis report. He recorded the statement of witnesses, completed the investigation and laid charge before court.

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, Thodupuzha. The said court committed the case to Additional Sessions Court (Adhoc-1),

Thodupuzha for trial and disposal. The latter court, on receipt of records and on appearance of accused, framed charge for the offence under Sections 8(1) and (2) and 55(a) and (i) of Abkari Act. To the charge, accused pleaded not guilty and claimed to be tried.

4. The prosecution therefore had PWs 1 to 4 examined and Exts.P1 to P5 marked. M.O.1 to M.O.4 series were got identified and marked.

5. After the close of the prosecution evidence, accused were questioned under Section 313 Cr.P.C. They denied all the incriminating circumstances brought out in evidence against them and maintained that they were innocent.

6. Finding that the accused could not be acquitted under Section 232 Cr.P.C, they were asked to enter on their defence. They chose to adduce no evidence.

7. The court below, greatly impressed by the evidence of PWs 3 and 4 and also the contemporaneous document namely, Ext.P1 mahazar, came to the conclusion that the prosecution has proved its case beyond reasonable doubt. The conviction and

sentence as already mentioned followed.

8. Learned counsel appearing for the appellant-1st accused, assailing the conviction and sentence, pointed out that this appeal will have to succeed on a very short ground. It is trite that forwarding note shall contain specimen of sample seal also. The said mandatory requirement is not complied with in the case on hand and therefore, the appellant is entitled to acquittal on that ground.

9. Learned Public Prosecutor, on the other hand, contended that the evidence of PWs 3 and 4 are cogent and convincing to come to the conclusion that the accused is guilty.

10. After having heard the learned counsel for the appellant, learned Public Prosecutor and also after having perused the records, it is felt that there is considerable force in the submission made by the learned counsel for the appellant.

11. Ext.P4 is the forwarding note. It contains a column for providing the specimen seal on the sample. No specimen of sample seal is seen on the forwarding note Ext.P4. In the decision in ***Krishnan*** vs. ***State*** (2015 (2) KLT SN 8), it was held

as follows:

“Ext.P5 is a copy of the Forwarding Note submitted before the court for sending sample for subjecting it to chemical analysis. A specific space is provided in the Forwarding Note for affixing the sample seal. No such sample seal was affixed on Ext.P5. Whether the sample seal was affixed on the original of Ext.P5 sent to the Chemical Examiner? Normally, if the sample seal is not appearing in the copy of the Forwarding Note, in this case it is Ext.P5, it has to be presumed that such sample seal was not affixed on the original Forwarding Note unless proved otherwise. A copy of the Forwarding Note is kept in the office of the court for serving certain purposes. The purposes are evidence from the contents of the form of the Forwarding Note itself. They include the quantity and description of the sample drawn from the bulk of the contraband, the details of the case and the space for providing the sample impression of the seal affixed on the sample taken from the bulk of the contraband. Therefore, as already stated, the absence of sample seal in the space provided in the copy of the Forwarding Note. Is sufficient reason for presuming that the sample seal is not provided in the original Forwarding Note. Of course, this is only a rebuttable presumption. In the case on hand, such presumption has not been rebutted by the prosecution.”

12. It is not necessary to reiterate the significance and necessity of providing specimen of sample seal on the forwarding note. In the absence of proper forwarding note, the prosecution cannot succeed.

For the above reasons, this appeal is allowed. The conviction and sentence passed by the court below are set aside and it is held that the 1st accused is not guilty of the offence. He stands acquitted of the charges levelled against him. His bail bond shall stand cancelled and he is set at liberty.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True Copy //

P.A to Judge.