

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

CRL.A.No. 223 of 2006 ()

**AGAINST THE JUDGMENT IN SC 474/2004 of ADDITIONALSESSIONS COURT , FAST
TRACK(ADHOC) III, MANJERI DATED 17-01-2006**

IN CP 88/2004 OF JUDICIAL FIRST CLASS MAGISTRATE NILAMBUR

APPELLANT(S)/ACCUSED::

**CHANDRAN, S/O. KALIYAMKULAM CHINNAPPAN
AMARAMBALAM AMSOM, POOKKOTTUMPADAM AMSOM
NILAMBUR TALUK.**

BY ADV. SRI.K.P.MUJEEB

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT. S. HYMA

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 223 of 2006

Dated this the 07th day of October, 2015

J U D G M E N T

The accused, who was prosecuted for the offence punishable under Section 8(1) of the Abkari act, was found guilty of the same. He was therefore convicted and sentenced to suffer rigorous imprisonment for a period of two years and to pay a fine of ₹1 lakh with a default clause of six months. Set off as per law was allowed.

2. The incident in this case occurred on 09.06.2003. When PW1, the preventive officer along with PW2 and other officers were on routine patrol duty, they found the accused coming along the road carrying black can in his right hand in front of one Koya's house. Feeling suspicious, they went near him which made the accused nervous and jittery. The can in his possession was seized and contents were examined. By taste and smell, they realized that it was arrack. PW1 informed the accused about the offence

committed by him. He then prepared a sample of the article so seized. Ext.P1 is the arrest memo. On the samples and the balance quantity, he had the label and seal affixed containing the signature of the accused, witnesses and himself. Ext.P2 seizure mahazar was also prepared. He returned to the Station and handed over the accused along with records and the articles seized to the Excise Inspector, Nilambur. PW5 took over investigation and he had the accused and the articles seized produced before the court on the very same day. He recorded statement of witnesses and registered crime as per Ext.P4. He prepared the list of properties which is Ext.P5 and the forwarding note prepared by him is Ext.P6. He obtained Ext.P7 chemical analysis report. After completing investigation, he laid charge before court.

3. The court before which the final report was laid, took cognizance of the offence, but finding the offence to be exclusively triable by a Court of Sessions, committed the

case to Sessions Court, Manjeri. The said court made over the case to Additional Sessions Court, Fast Track, Adhoc-III, Manjeri, for trial and disposal. The latter court on receipt of records and on appearance of the accused before it, framed charges for the offence punishable under Section 8(1) of the Abkari Act.

4. 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 P9 marked. MO1 was got identified and marked.

5. 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.

6. Finding that he could not be acquitted under Section 232 Cr.P.C., he was asked to enter on his defence. He examined DW1 in support of his defence.

7. Finding that the evidence of PWs 1 and 2 taken along with Ext.P1 and also the prompt production of the accused and the articles before court, the court below came to the conclusion that the prosecution version is acceptable and prosecution has established the case beyond reasonable doubt. The court below also found that even though the independent witnesses turned hostile, their signatures were compared and found to be intact both on MO1 and on the samples. In fact one of them had admitted his signature on Ext.P1 mahazar also. On the basis of the above evidence, the court below held the accused guilty and conviction and sentence followed.

8. Assailing the conviction and sentence, the learned counsel for the appellant pointed out that in the absence of independent corroborative evidence, the court below was not justified in relying on the evidence given by the official witnesses. The two attesting witnesses namely PWs 3 and 4 have categorically stated that they are not signed as alleged

by the prosecution even though one of them admitted his signature on Ext.P2 mahazar. Attention was also drawn to the evidence of DW1 whose evidence, according to the learned counsel was not even considered by the court below. Had his evidence been appreciated in proper perspective, it could have been seen that the incident has not taken place as alleged by the prosecution. This non appreciation of the evidence of DW1 has resulted in miscarriage of justice and conviction and sentence cannot stand.

9. The learned Public Prosecutor on the other hand pointed out that the court below has analysed the evidence meticulously and had found the evidence of PWs 1 and 2 to be above board. According to the learned Public Prosecutor, it is not the law that the evidence given by the officials will always have to be corroborated by the evidence of independent witnesses. If the evidence of officers concerned is shown to be cogent and convincing, there is no

reason as to why conviction should not be based on the same. In the case on hand, the learned Public Prosecutor pointed out that PWs 1 and 2 have spoken about the entire details and their version is supported by various document produced by the prosecution. The prompt production before the court concerned adds to the fact that the prosecution story is true. As regards the evidence of DW1, the learned Public Prosecutor pointed out that DW1 speaks about a case which even the accused did not have at the time of questioning under Section 313 Cr.P.C.. Therefore it could not be given undue importance.

10. After having heard the learned counsel for the appellant and the learned Public Prosecutor and after having perused the records, this Court finds little merit in the appeal. As rightly pointed out by the learned Public Prosecutor, PWs 1 and 2 the two officers, who were on patrol duty along with other officers, had found the accused coming along the road carrying a can. Both of them speak

about having intercepted him and seized the can and found 1½ litres of arrack in it. Both of them give uniform version regarding the steps followed by PW1 regarding the sampling, labelling on the samples as well as the balance quantity and the preparation of records. PWs 1 and 2 say that after having taken the samples, they arrested the accused, prepared arrest memo and they returned to the station with the accused and the articles seized and handed over to PW5.

11. PW5 deposes that on the very same day itself, articles, the accused and the documents were produced before the court and then he speaks about having prepared the occurrence report etc..

12. It is true that the two independent witnesses namely PWs 3 and 4 do not fully support the prosecution version. One of them admitted his signature on Ext.P2 mahazar and he denied the signature on the label affixed on the samples and the MO1 can. The court below compared

the signatures and found them to be tallying and found that in fact the said person had signed on the labels also.

13. It is not the law that as soon as the independent witnesses turn hostile and refuse to support the prosecution, the accused is entitled to an acquittal. If as a matter of fact, the evidence of the Police Officers is found to be trustworthy, credit worthy and contains a ring of truth, there is no reason as to why the court should not accept their evidence and enter a finding on that basis. Of course, normally the court insists that their evidence should be without blemish.

14. In the case on hand, to be strictly speaking, there is corroborative evidence in the form of document i.e., the arrest memo, the mahazar prepared and the labels affixed go a long way supporting the version given by PWs 1 and 2. Further one cannot omit to note that the articles and the accused were produced before the court on the very same day itself. The prompt production of the articles further

adds to the fact that the prosecution version is true. These factors persuaded the court below to come to the conclusion that the offence has been committed by the accused. It could not be said that the finding of the court below is either perverse or based on irrelevant material. The court below has taken all the relevant aspects into consideration and has come to the conclusion that there is no justification or reason to disbelieve PWs 1 and 2 and the contemporaneous document prepared and produced by the prosecution.

15. This Court finds no ground to take a different view from the view taken by the lower court.

16. Faced with the above situation, the learned counsel for the appellant contended that considering the quantity of contraband seized, the sentence imposed is very harsh and is disproportionate to the offence committed by the accused.

17. There seems to be some substance in the above submission. The quantity seized is only two litres and there

is nothing to show the accused is a habitual offender. Considering the nature of offence committed, the quantity seized from the accused etc., it is felt that some leniency can be shown with regard to the sentence so as to enable him to reform himself.

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 rigorous imprisonment for a period of six months 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