

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

CRL.A.No. 226 of 2006 ()

**AGAINST THE JUDGMENT IN SC 270/2001 of ADDITIONAL SESSIONS COURT, FAST
TRACK (ADHOC)-III, MANJERI DATED 04-01-2006**

IN CP 25/2000 OF JUDICIAL FIRST CLASS MAGISTRATE, NILAMBUR

PETITIONER/APPELLANT:

**GUNASEELAN, S/O.PADMANABHAN,
KALARIKKUNNU, NILAMBUR TALUK.**

BY ADV. SRI.K.P.MUJEEB

RESPONDENT(S):

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

BY PUBLIC PROSECUTOR SMT. LILLY LESLIE

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 226 of 2006

Dated this the 04th day of December, 2015

J U D G M E N T

Eight persons were sought to be prosecuted for the offences punishable under Sections 55(a), (i) and 15 C of the Abkari Act. Among them, the case against A1, A2, A5, A7 and A8 was committed by the Sessions Court. A3, A4 and A6 absconded and their case remains uncommitted. It is seen from the records that at a later point of time, A5, A7 and A8 filed C.M.P.339/2005 to plead guilty of the offence. That petition was allowed and accordingly A5, A7 and A8 were found guilty for the charges levelled against them under Section 15 C read with Section 63 of the Kerala Abkari Act and they were convicted and sentenced to pay a fine of ₹5,000/- with a default clause of simple imprisonment for a period of three months. During the pendency of the proceedings, A1 died and charge against him stood abated. The result was that at the relevant point of time, A2 alone

faced trial. A2 was found guilty. Therefore he was convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹ 1 lakh with a default clause of simple imprisonment for a further period of two months.

2. The incident which gave rise to the case occurred on 21.08.1998. PW2 was functioning as the Circle Inspector of Police at Nilambur Police Station. On getting reliable information that in Kerala Hotel owned by the first accused, illegal sale of liquor was being carried on, PW2 along with PW3 and others after preparing a search memo and having it sent to the court, conducted a search of the hotel. PW2 found A1 serving liquor to several persons who were sitting around the table. As the act committed by the first accused and others were illegal, they were arrested on the spot. PW2 would say that the liquor that was left in the bottle, after the first accused and others had consumed, was taken into custody and sealed and labelled. So also the six glasses used by them. Two soda bottles containing soda and three

empty soda bottles were also seized. Further search yielded to the recovery of two bottles of XXX Rum of 750 ml bottle, two bottles of Brandy of 375ml capacity and an empty bottle were also recovered. He prepared the search list Exts.P4 and P5. He then returned to the Station along with articles seized and the accused persons and registered crime as per Ext.P6. The arrest memo prepared by him is Ext.P7. The contraband articles seized were produced before court after preparing 151 form. Investigation was done by another officer and charge was laid before court.

3. The court before which the final report was laid, took cognizance of the offence and finding the offences to be exclusively triable by a Court of Sessions, committed the case of those persons, who had appeared before the said court, to Sessions Court, Manjeri 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-III (Adhoc), Manjeri, for trial and disposal.

4. The latter court, on receipt of records and appearance of the accused before the said court, framed charges against the accused persons before it, as already stated, A5, A7 and A8 pleaded guilty. A1 died and charge against him stood abated.

5. To the charge the second accused pleaded not guilty and claimed to be tried. The prosecution therefore examined PWs 1 to 9 and had Exts.P1 to P23A marked. MOs 1 to 12 were got identified and marked.

6. 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.

7. Finding that he could not be acquitted under Section 232 Cr.P.C., he was asked to enter on his defence. He examined DW1 and had Ext.D1 marked.

8. The court below found the evidence of PWs 2 and 3 to be convincing enough when taken along with Exts. P4

and P5 found to be strong enough to come to the conclusion that the offences have been made out as against the second accused. He was accordingly convicted and sentenced as already mentioned.

9. Assailing the conviction, the learned counsel appearing for the appellant contended that the evidence against the second accused is confined to the testimony of PWs 2 and 3 and the independent witnesses have turned hostile. In the facts and circumstances of the case, it is not safe to place reliance on the testimony of PWs 2 and 3 and the court below ought not to have accepted the their evidence in toto. The court should have insisted for independent corroborative evidence before accepting the testimony given by PWs 2 and 3.

10. The learned Public Prosecutor pointed out that it is not the law that the evidence of Police Officer or the Excise Officer as the case may be will always have to receive corroboration from independent sources. If their evidence is

found to be convincing and cogent enough, there is no harm in acting on the said evidence. It is not necessary to look for corroboration. The court below has discussed the entire evidence and has come to the conclusion that the offence as against the second accused is made out. There are no grounds made out to interfere with the finding of the court below.

11. After having heard the learned counsel for the appellant and the learned Public Prosecutor and after having perused the records, the learned Public Prosecutor seems to be justified in her contention that the court below has considered the entire materials in considerable detail and has come to the right conclusion. PW2 is the Detecting Officer and PW3 had accompanied him. They speak about the detection of offence and also the various documents prepared by PW2.

12. It is true that the evidence regarding the complicity of the second accused is confined to the

testimony of PWs 2 and 3. Independent witnesses examined as PWs 6 and 7 turned hostile to the prosecution. It must be noticed that PWs 2 and 3 were subjected to severe cross examination, but nothing could be brought out from their evidence to show that they had not stated the truth. There is nothing to show that they had an axe to grind against the second accused or they had any ill-will towards him.

13. As rightly pointed out by the learned Public Prosecutor, it is not the law that unless corroborated, the evidence of Police officers cannot be accepted. If the evidence of Police officers is found to be convincing, cogent and it contains the ring of truth, there is absolutely no harm in acting on that evidence and the court need not look for corroboration. After all, corroboration is a rule of prudence and not a rule of law. Here, in the case on hand, there is nothing to show that PWs 2 and 3 had any reasons to be vindictive towards the accused.

14. Further, the search list produced which shows the details of what transpired at the place of incident adds credence to the prosecution version of the incident. Moreover, the prompt production of the articles and accused before court also adds credit worthy to the prosecution story. The court below has analysed the evidence in considerable detail and found the evidence of PWs 2 and 3 are sufficient to come to the conclusion that A2 has committed the offence as alleged against him. His conviction has only to stand.

15. Though the court found the second accused guilty under Sections both 55(i) and 55(a), no separate sentence was imposed under Section 55(a).

16. Considering the nature of offence committed by the second accused and his position at the relevant point of time and also considering the passage of time, it is felt that some leniency can be shown with regard to the sentence.

17. Thus while upholding the conviction of the second accused, the sentence imposed by the court below is set aside and instead A2 is sentenced to undergo simple imprisonment for one month and to pay fine of ₹1 lakh, in default of payment of which he is to suffer simple imprisonment for a further period of one month.

With the above modification, this appeal stands disposed of.

Sd/-
P.BHAVADASAN
JUDGE

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P.A. to Judge