

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA,
1937

CRL.A.No. 319 of 2006

AGAINST THE JUDGMENT IN SC 236/2003 of ADDL. SESSIONS COURT
(ADHOC)-III, KASARAGODE.

APPELLANT(S)/ACCUSED.:

MOUVAL CHANDRAN, S/O.MOUVEL KUNHANI,
RESIDING AG MOUVAL, PALLIKKARA VILLAGE,
HOSDURG TALUK.

BY ADVS. SRI.M.THAMBAN
SMT.T.SUDHAMANI

RESPONDENT(S)/COMPLAINANT.:

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

BY PUBLIC PROSECUTOR SMT. LILLY LESLIE.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
15-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 319 of 2006

Dated this the 15th day of December, 2015.

JUDGMENT

The accused was prosecuted for the offence punishable under Section 55(a) of the Abkari Act. He was found guilty and therefore, he was convicted and sentenced to undergo simple imprisonment for one year and to pay fine of Rs.1,00,000/–, in default, to undergo simple imprisonment for six months.

2. The prosecution case is that on 12.9.2000 P.W.1, the Excise Inspector, and P.W.2, the Excise Guard along with others were on routine patrol duty and at about 5.30 p.m. they reached near the house of one Kanjani. They happened to see the accused standing a little distance away with a plastic bag in his right hand. He tried to conceal the bag which created suspicion in the mind of the officers. They went

to him and seized the bag. On examination of the contents, it was found to contain 61 packets of 100 ml each containing some sort of liquid. One of the packets was opened and its contents were identified as arrack by taste and smell. Ext.P1 is the arrest memo prepared for arresting the accused. Two other packets were also opened and all the contents in the three packets were poured into a bottle of 375 ml capacity and taken as sample. That was sealed and labelled and so also the balance contraband article and the labels contained the signature of the accused, witnesses and P.W.1.

3. P.W.5 was the Excise Inspector of the Range at the relevant time. On that day he received the accused, the report and the thondi articles produced before him. He registered Crime No. 41 of 2000 under Section 55(a) of the Abkari Act on the basis of Ext.P4 report. Thereafter he had the accused, articles and the documents produced before court. Forwarding note is produced as Ext.P6 and the chemical

analysis report is Ext.P7. The subsequent officer completed investigation and laid charge before court.

4. The court, before which final report was laid took cognizance of the offence. Finding that the offence is one exclusively triable by a court of Sessions, the said court committed the case to Sessions Court, Kasaragod under Section 209 Cr.P.C. after following the necessary procedures. That court made over the case to Additional Sessions Court (Adhoc) III, Kasaragode for trial and disposal.

5. The latter court, on receipt of records and on appearance of the accused framed charge for the offence punishable under Section 55(a) of the Abkari Act. To the charge, the accused pleaded not guilty and claimed to be tried. The prosecution therefore had P.Ws.1 to 6 examined and had Exts.P1 to P8 marked. M.Os. 1 to 3 were got identified and marked. After the close of the prosecution evidence, the 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. Finding that he could not be acquitted under Section 232 Cr.P.C., he was asked to enter on his defence. He chose to adduce no evidence.

6. On appreciation of the materials before it, the court below came to the conclusion that the prosecution has succeeded in establishing the guilt of the accused. Accordingly, the accused was convicted and sentenced as already mentioned.

7. After having gone through the records, this Court is of the opinion that there are no grounds made out to interfere with the finding of the court below. P.Ws. 1 and 2 are the officers who are on patrol duty along with other officers. Both of them gave a uniform and consistent version of the incident. They say as to how they happened to see the accused, how he behaved, and about the seizure of the

contraband article, examination of the contents, preparation of mahazar etc. There is no inconsistency in their version. Even though they were cross-examined at length, nothing could be brought out to discard their version.

8. They also say about the sampling done by them and also having sealed and labelled the balance contraband article.

9. The main criticism levelled against the acceptance of their evidence is that there is no independent corroboration of their evidence. The two independent witnesses examined by the prosecution had refused to support the prosecution case. But both of them admitted their signature in the relevant document.

10. If the evidence of P.Ws. 1 and 2 could be accepted without demour, then the mere fact that there is no corroboration from other sources is not a ground to reject their evidence. It is not the law that evidence furnished by

excise officers or police officers cannot be accepted. The only thing that should be borne in mind is that it has to inspire confidence in the mind of court. After all corroboration is not a rule of law.

11. It is not as if there is no corroboration in the strict sense of the term. Ext.P2 mahazar gives a detail description of what had transpired at the spot and it is prepared by P.W.1. It is a contemporaneous document. So also the occurrence report which is drawn up soon after the incident. It is too difficult to believe that Ext.P2 mahazar could have been manipulated or concocted. Further, it is also significant to notice that the accused, documents, the mahazar and the occurrence report etc were produced in court at the earliest point of time.

12. It is very vehemently contended that M.O.1 does not contain any label as spoken to by P.W.1 and there is no evidence as of now to show that the same was one seized

from the possession of the accused. The lower court has considered the above aspect in paragraph 9 of its judgment. It has given reasons as to what could have happened to the labels on M.O.1. There is no reason to take a different view.

13. The evidence furnished by P.Ws. 1 and 2, the details contained in Ext.P2, the prompt production of the accused and the documents before court etc had gone a long way in establishing the prosecution case. The above factors which weighed with the court below in coming to the conclusion that the offence has been made out. Even though P.Ws. 1 and 2 were cross-examined at length, nothing could be brought out to impeach their evidence.

14. The result is that there is no justification to discard their evidence especially in the light of Ext.P2. If the evidence of P.Ws. 1 and 2 are accepted, then the detection is clearly proved. The chemical analysis report shows presence of ethyl alcohol in the contraband article.

This appeal is without merits and it is dismissed confirming the conviction and sentence imposed by the trial court.

P. BHAVADASAN,
JUDGE

sb.