

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

CRL.A.No. 365 of 2006 (Y)

AGAINST THE JUDGMENT IN SC 32/2004 of ADDL. SESSIONS COURT
FAST COURT NO.III, PALAKKAD.

APPELLANT(S)/ACCUSED:

KUTTAN, S/O. KUNHAN, AGED 49 YEARS,
KARIMBANATHU VEEDU, VATTENAD, PATHITHARA,
OTTAPALAM TALUK, PALAKKAD DISTRICT.

BY ADVS.SRI.U.MUHAMMED MUSTHAFA
SRI.K.ABDUL JAWAD

RESPONDENT(S)/COMPLAINANTS:

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

2. EXCISE INSPECTOR,
THRITHALA, EXCISE RANGE.

BY PUBLIC PROSECUTOR SMT. S. HYMA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
09-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 365 of 2006

Dated this the 9th day of September, 2015.

JUDGMENT

The accused was prosecuted for the offence punishable under Section 55(a) of the Abkari Act. He was found guilty and therefore, convicted and sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.1,00,000/–, in default, to undergo simple imprisonment for six months. Set off as per law was allowed.

2. The incident in this case took place on 23.5.1998 . On that day, while P.Ws. 1 and 2 along with other officers were on patrol duty, they happened to come across the accused coming in the opposite direction carrying a plastic bag. According to the prosecution case, on seeing them, he panicked and tried to flee from the place. He was intercepted and seized a plastic bag which contained a can having capacity of 10 litres with 9 litres of liquor. On tasting the same, they

identified it as illicit arrack. Finding that the accused was carrying contraband article, they arrested him and seized the article. P.W.1 took 300 mls. of arrack in a bottle as sample and it was duly sealed and labeled containing the signatures of the accused and the witnesses. He claims to have prepared Ext.P2 scene mahazar. He thereafter returned to his office and registered crime occurrence report as Ext.P3. The accused and the articles were produced before court. He prepared Ext.P5 forwarding note and Ext.P6 is the property list. P.W.5 conducted investigation in the case, verified the records and obtained Ext.P9 report, completed investigation and laid charge before court.

3. JFCM Court, Pattambi took cognizance of the offence. Finding that the offence is exclusively triable by a court of Sessions, the said court committed the case to Sessions Court, Palakkad. The said court made over the case to Additional Sessions Court, Ottappalam for trial and disposal.

4. 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 4 examined and had Exts.P1 to P9 marked. After the close of the 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. 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.

5. Relying on the evidence of P.Ws.1 and 2 and also Ext.P2 and chemical analysis report, the accused was found guilty. Conviction and sentence as already mentioned followed. The said conviction and sentence are assailed in this appeal.

6. Assailing the conviction and sentence, learned counsel appearing for the appellant raised only one point for consideration. According to the learned counsel, as per the Excise Manual, atleast two samples ought to have been taken by the detecting officer. That is a mandatory provision and cannot be diluted. In the case on hand, only one sample had been taken as could be seen from Ext.P2 and from the evidence of P.W.1 and that vitiates the proceedings.

7. It has been held by this Court that two samples of the contraband article should be taken and in that matter strict compliance is necessary. Even going by the evidence of P.Ws. 1 and 2, the fact remains that only one sample had been taken and this would be evident from Ext.P2 also. Therefore, this would show that there is violation of the mandatory provisions of the Act which vitiates the proceedings.

In the result, this appeal is allowed, the conviction and sentence passed by the court below are set aside and the accused is acquitted of the charge levelled against him. His bail bond shall stand cancelled and he is set at liberty.

P. BHAVADASAN,
JUDGE

sb.