

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

CRL.A.No. 366 of 2006

AGAINST THE JUDGMENT IN SC 317/2001 of ADDL.SESIONS COURT
(ADHOC-II) KASARAGOD DATED 24-01-2006

APPELLANT/ACCUSED:

BALAPPA GOWDA, S/O.BATIAPPA GOWDA,
SWARGA, PADRE VILLAGE, KASARGOD TALUK.

BY ADV. SRI.T.G.RAJENDRAN.

RESPONDENTS/COMPLAINANT & STATE:

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1. THE EXCISE INSPECTOR,
BADIADKA EXCISE RANGE.
 2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY SMT. LILLY LESLIE, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
29-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.366 OF 2006

Dated this the 29th day of October, 2015.

J U D G M E N T

The accused was prosecuted for the offence punishable under Section 55(a) of Abkari Act. He was found guilty and was therefore convicted and sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.1 lakh with default clause of rigorous imprisonment for three months.

2. The incident in this case is alleged to have taken place on 16.03.2000. PW1 was then functioning as Excise Inspector at Excise Range Office, Bediyadka. He along with the Preventive Officer, A.V. Narayanan and other officers were on patrol duty on that day and when they reached a place called 'Swarga', they happened to see the accused coming along the road carrying a sack on his head. Seeing the Excise Officials, he panicked and that created suspicion in the mind of officers who intercepted him and examined the contents of the sack and the sack was found to

contain 200 packets each containing 100ml of Karnataka arrack. PW1 opened the three packets and examined the contents and by taste and smell he recognised the liquid as arrack. He prepared the arrest memo Ext.P1 and arrested the accused. He then says that from the three packets opened, 300ml of sample was taken in a bottle having a capacity of 375 ml and the same was sealed and labeled and the emptied three packets along with the balance packets were tied and sealed. As regards the labels on the sample, he says that it contained the signature of the accused, witnesses and himself. Ext.P2 is the mahazar said to have been prepared at the place of occurrence. Thereafter, he along with his team of officers returned to the Station and as per Ext.P3 crime and occurrence report, registered a crime. He prepared the property list, Ext.P4 and produced the accused and article before court on the very next day itself. He prepared Ext.P5 forwarding note and obtained Ext.P6 chemical analysis report. Investigation was conducted by PW1 himself. He recorded the statement of witnesses and after completing investigation,

charge was laid before court.

3. The court before which charge was laid took cognizance of the offence and on finding that the offence is exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Kasaragod. The said court made over the case to Additional Sessions Court (Ad hoc) II, Kasaragod for trial and disposal. The latter court, on receipt of records and on appearance of the accused, framed charge for the offence under Section 55(a) 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 P6 marked. M.O.s 1 to 3 were got identified and marked.

5. After the close of the prosecution evidence, 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 the accused could not be acquitted under Section 232 Cr.P.C, he was asked to enter on his defence. He chose to adduce no evidence.

7. Relying on the evidence of PWs 1 and 4 and the contemporaneous document Ext.P2 and also on the prompt production of accused and articles before court on the very next day itself, court below formed the opinion that the prosecution has succeeded in establishing the case beyond reasonable doubt and found the accused guilty. Conviction and sentence as already mentioned followed.

8. Learned counsel appearing for the appellant challenges the conviction and sentence on the ground that on a reading of the evidence of PW1 it can be seen that he had tampered with the bundle which contained the articles after taking samples. He had no reason to do so and that would be evident from his testimony wherein he says that the seal was lost and the sack had been opened. Learned counsel contended that this means that the sack was opened before it was produced before court

and that is precisely the case that the bundles was tampered before it was produced before court. If that be so, it could not be said that the article produced before court was the article seized from the possession of the accused in which case, he is entitled to acquittal.

9. Learned Public Prosecutor, on the other hand, contended that the evidence of PW1 has to be read as a whole and has to be understood in the light of the narration in Ext.P1 mahazar. According to learned Public Prosecutor, PW1 has stated that after taking sample, the emptied three packets were tied along with the balance packets and they were sealed. It is very much possible, according to the learned Public Prosecutor, that in the light of the fact that the emptied packets were separately marked as M.O.3 series, the sack might have been opened before court and that seal may be found missing and thus concluded to have been tampered with. According to the learned Public Prosecutor, there is no suggestion either to PW1 or PW4 that they had any ill motive or oblique intention to falsely implicate the accused. It is

contended that the court below has analysed the evidence in considerable detail and has come to the conclusion that the offence has been made out. No interfere is called for in the said finding, according to learned Public Prosecutor.

10. The evidence in the case consists of the testimony of PWs 1 to 4. The evidence regarding detection and sealing remains confined to the testimony of PWs 1 and 4. Among them, PW1 was the Excise Inspector and PW4 was the Preventive Officer. PW1 says that he along with PW4 and others had gone for routine patrol duty on 16.03.2000 and when they reached the place of occurrence, they happened to see the accused coming along the road carrying a sack on his head. Both of them say that seeing the Excise Officials, he panicked which created suspicion in the mind of officers. They intercepted him and examined the contents of the can. Both of them say that it was found that accused was in possession of 200 packets each containing 100ml of Karnataka arrack. The evidence of PWs 1 and 4 is to the effect that of them PW1 opened one packet and

examined the contents and was satisfied that it was arrack. Thereafter they say that three packets were opened and the contents were emptied into a bottle having a capacity of 375 ml and from that 300 ml was taken as sample and it was sealed and labeled. The label affixed on the sample contained the signature of the accused, witnesses and PW1. They also say that the three emptied packets as well as the remaining packets were put back into the sack and they were sealed separately. The evidence of PW1 is to the effect that he returned to the office along with the accused, articles and the documents and registered crime as per Ext.P3 occurrence report. He also speaks about having prepared property list and says that accused, documents and the seized articles were produced before court on the very next day itself. Even though PWs 1 and 4 were subjected to severe cross examination, there is nothing in their evidence to show that they are not trustworthy or they are not speaking truth. As rightly pointed out by the learned Public Prosecutor, there is nothing to show that they had any reason to falsely implicate the accused.

11. As regards the tampering issue is concerned, it has no basis at all. It is clear from the evidence of PW1 that he had taken sample from three packets and thereafter after sealing and labeling the sample, he had the three emptied covers put along with the balance 197 packets containing arrack and that bag was sealed. It would appear that at the time of production of articles before court, in all probability the bundle would have been opened. A sentence is picked out from the evidence of PW1 which reads as follows:

“ആ seal ചാക്കു കെട്ട് പൊട്ടിച്ചപ്പോൾ പോയി”

The said statement cannot be given undue importance and cannot be ruled out of context.

12. The court below has analysed the evidence in considerable detail and has come to the conclusion that the prosecution has succeeded in establishing the case against the accused. It is true that evidence of detection of offence remains confined to the testimony of official witnesses and there is nothing to show that they are not trustworthy and they are not

speaking truth. If the evidence of the official witnesses are found to be without blemish, there is no reason as to why it should not be accepted and conclusion drawn on that basis.

13. In the case on hand, apart from the evidence, the contemporaneous document namely, mahazar prepared by PW1 and so also the prompt production of accused, documents and articles before court on the very next day itself to a great extent strengthens the prosecution case. It therefore could not be said that the court below was in error in holding the accused guilty. The conviction has only to stand.

14. What now remains to be considered is the sentence to be imposed. The court below has imposed sentence of rigorous imprisonment for one year and fine of Rs.1 lakh with default clause of rigorous imprisonment for three months. Considerable time has elapsed after the incident. This is not to see the offence lightly but only to observe that at this distance of time it may be improper to disturb the things settled down. But that does not mean that the accused need not suffer imprisonment.

15. Considering the various facts and circumstances, there seems to be some force in the submission made by the appellant that the sentence imposed is disproportionate to the offence. It is felt that a leniency be shown in the matter of sentence.

Thus, while upholding the conviction of the accused for the offence under Section 55(a) of Abkari Act, the sentence imposed is set aside and instead the accused is sentenced to suffer simple imprisonment for four months and to pay a fine of Rs.1 lakh with default clause of simple imprisonment for one month. Set off as per law is allowed.

With the above modification, this appeal is disposed of.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.