

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

CRL.A.No. 368 of 2006

AGAINST THE JUDGMENT IN SC 696/2001 of ADDL.SESIONS COURT
(ADHOC)-III, THALASSERY.

APPELLANT(S)/ACCUSED:

C.T. THANKACHAN @ SCARIA,
CHEMBAKASSERI HOUSE, AYYAMKUNNU AMSOM,
KOTTUKAPPARA.

BY ADV. SRI.GRASHIOUS KURIAKOSE (SR.)

RESPONDENT(S)/COMPLAINANT:

STATE – S.I. OF POLICE,
KARIKOTTAKARI, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. C.K. JAYAKUMAR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
14-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 368 of 2006

Dated this the 14th day of October, 2015.

JUDGMENT

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

2. The prosecution case is that on 21.5.2000 in the evening while P.W.1 along with other officers were on patrol duty, when they reached Kotukapara junction, they found the accused coming along the road holding a black plastic bag. Police jeep was stopped near him and P.W.1 and the other Constable got down. They enquired about the contents of the bag. The reply was that it contained household articles. Feeling suspicious, the bag was seized

and examined in the presence of two witnesses. It was found that the bag contained 36 packets of Karnataka made arrack and each packet contained 100 ml. liquid. Two packets were opened and by tasting and smelling the same, it was found to be arrack. Ext.P1 arrest memo was prepared and accused was arrested. P.W.1 says that he took the two packets he opened as sample and put it in a bottle and label was affixed containing the signature of the accused, himself and witnesses. The bag with 34 packets was packed, sealed and labelled. That label contains the signature of P.W.1, the accused and witnesses. Ext.P2 is the seizure mahazar prepared by P.W.1. He then returned to the station with the articles seized and the accused and registered Crime No. 32 of 2000 as per Ext.P3 FIR. He kept the articles in his custody and produced before court on the next day. Ext.P4 is the list of properties produced before court. Investigation was done by the Sub Inspector of Police. P.W.4 conducted investigation and prepared scene mahazar. He recorded statements of witnesses, sent the forwarding to the court,

namely, Ext.P6 and obtained Ext.P7 report. He completed investigation and laid charge before court.

3. The court, before which final report was laid took cognizance of the offence. Finding that the case is one exclusively triable by a court of Sessions, the said court committed the case to Sessions Court, Thalassery under Section 209 Cr.P.C. after following the necessary procedures. The said court made over the case to Additional Sessions Court Adhoc-III, Thalassery 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 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 5 examined and had Exts.P1 to P7 marked. M.O. 1 was got identified and 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.W.1 along with Ext.P2 and also the fact that the articles were promptly produced before court, the trial court chose to accept the version of the prosecution and found the accused guilty. Conviction and sentence as already mentioned followed. The said conviction and sentence are assailed in this appeal.

6. Learned Senior Counsel appearing for the appellant focused his contention on two crucial aspects. That is, according to the learned Senior Counsel, a reading of the documents would indicate that the sample analysed in the laboratory is not the sample collected at the spot by P.W.1. If that be so, the prosecution case has to fail. Highlighting the above contention, learned counsel referred to Ext.P2 and pointed out that going by the narration of events in Ext.P2, it is clear that two packets were opened

and those packets were put in a bottle and the same was sealed and labelled and taken as sample. If that be so, according to the Learned Senior Court, the bottle should contain two packets. There is no such observation by the Chemical Analyst, who received the sample. There is no guarantee that the sample analysed is the sample taken at the spot.

7. Learned Senior Counsel also pointed out that if it is otherwise, the packets which were opened should have been sealed and produced before court.

8. Learned Public Prosecutor tried to support the finding of the trial court and contended that there is no infirmity in the said finding.

9. After having heard learned Senior Counsel for the appellant and learned Public Prosecutor, it is felt that there is considerable force in the submission of the learned Senior Counsel for the appellant. Learned Senior Counsel for the appellant contended that as per evidence the sample bottle contained the packets which were opened by P.W.1.

But learned Senior Counsel for the appellant seems to be justified in his submission. In Ext.P2, initially it is stated as follows:

“(1) കറുത്ത പ്ലാസ്റ്റിക് സഞ്ചിയിൽ കാണപ്പെട്ട സുമാർ 100 ml. വീതമുള്ള 36 പായ്ക്കറ്റ് കർണാടക ചാരായത്തിൽ നിന്നും സുമാർ 100 ml. ഉള്ള 2 പായ്ക്കറ്റ് കർണാടക ചാരായം പൊട്ടിച്ച് പായ്ക്കറ്റ് അടക്കം ഒരു കുപ്പിയിലിട്ട് അടച്ച് തുണികൊണ്ട് പൊതിഞ്ഞ് നൂലുകൊണ്ട് കെട്ടി പ്രതിയും സാക്ഷികളും ഞാനും ഒപ്പിട്ട ലേബൽ ഒട്ടിച്ച് നൂൽകൊണ്ട് കെട്ടി സീൽ ചെയ്ത പായ്ക്കറ്റ്-1 (സാംബിളായി എടുത്തത്.)”

From the above narration it is seen that even according to P.W.1, the packets were also put in a bottle. If that be so, the packets should have been noticed by the Chemical Analyst while preparing Ext.P7 report. The narration in Ext.P7 is as follows:

“One sealed bottle containing 200 ml of a clear and colourless liquid alleged to be 'arrack' involved in Crime No. 32/2000 of Karikottukari Police Station, for chemical analysis.”

There is no mention of any packets inside the bottle. The result is that there is merit in the contention that the sample

which is sent to the Analyst may not be the sample drawn by P.W.1 at the spot going by the narration in Ext.P2 document. There is no guarantee that the sample analysed was the one drawn from the contraband article alleged to have been seized from the possession of the accused.

10. In that short ground, the appellant is entitled to succeed.

In the result, this appeal is allowed, the conviction and sentence passed by the trial court are set aside and it is held that the prosecution has not succeeded in proving the guilt of the accused beyond reasonable doubt. The accused is acquitted of the charges levelled against him. His bail bond shall stand cancelled and he is set at liberty.

P. BHAVADASAN,
JUDGE

sb.