

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

CRL.A.No. 381 of 2006 ()

**AGAINST THE JUDGMENT IN SC 218/2001 of ADDITIONAL SESSIONS COURT
(ADHOC)-III, THALASSERY DATED 21-01-2006**

APPELLANT(S)/ACCUSED:

**KUNNUMMAL MUKUNDAN,
S/O.ACHUTHAN, ARALAM AMSOM, DESOM
PAYORA.**

**BY ADVS.SRI.GRASHIOUS KURIAKOSE (SR.)
SRI.K.C.SANTHOSHKUMAR**

RESPONDENT(S)/COMPLAINANT:

**STATE-S.I. OF POLICE,
ARALAM, REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT. S. HYMA

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl. A. No. 381 of 2006

Dated this the 15th day of October, 2015

J U D G M E N T

The accused in this case was prosecuted for the offences punishable under Sections 55(a) and 55(g) of the Abkari Act. He was found guilty. Therefore, he was convicted and sentenced to suffer rigorous imprisonment for six months for each of the offences and to pay a fine of ₹1 lakh for each of the offences with a default clause of two months each. Set off as per law was allowed.

2. The incident in this case is said to have occurred on 22.08.1999. On that day, PW1 who was the S.I. of Iritty Police Station had gone on routine patrol duty. He claims that he got reliable information at 16.15 hrs. about the illicit distilling of arrack by the accused in his house. PW1 claims to have prepared a search memo, sent it to the court and then proceeded to the spot with his team of officers. When they reached the place, they found a shed on the western

side of the house and in that shed, PW1 found the accused distilling arrack. On seeing the Police Officers, the accused attempted to run away destroying the distilling apparatus. He was intercepted and arrested in the presence of the witnesses. He seized the articles found there. He also seized a blue can in which about 2 litres of arrack was found. He then says that he took sample in a bottle of 750 ml and sealed the sample bottle and affixed the label thereon containing the signature of the accused, witnesses and himself. He also speaks about having sealed the can and the balance quantity and affixed label on the same as stated above. He says that he then reached Aralam Police Station along with the accused, the thondi articles and the records and handed them over to the Officer in charge of the Aralam Police Station. The report so given by PW1 is marked as Ext.P2. Ext.P3 is the arrest memo drawn up by PW1. He identified the articles seized by him on the date of incident in court. PW4 was the Head Constable of Aralam Police

Station at the relevant time. On the basis of Ext.P2 report, he registered Crime No.36/99 as per Ext.P4 FIR. PW5 conducted the investigation in the case. He says that he inspected the place of occurrence, prepared Ext.P5 scene mahazar and recorded statements of witnesses. He also prepared Ext.P6 forwarding note for sending the sample for chemical examination and Ext.P7 is the property list. Ext.P10 is the chemical analysis report. After completing investigation, final report was laid before court.

3. The court before which the final report was laid, took cognizance of the offences and finding the offences to be exclusively triable by a Court of Sessions, committed the case to Sessions Court, Thalassery under Section 209 of 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 appearance of the accused before the said court, framed

charges for the offences punishable under Sections 55(a) and 55(g) of the Abkari Act.

5. To the charge the accused pleaded not guilty and claimed to be tried. The prosecution therefore had PWs 1 to 5 examined and had Exts.P1 to P10 marked. MOs 1 to 5 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 chose to adduce no evidence.

8. The court below, greatly impressed by the evidence of PWs 1 and 2 taken along with contemporaneous documents namely Exts. P1 search list and the prompt production of articles, the accused and the documents before court, found the accused guilty. Conviction and

sentence as already mentioned followed.

9. The learned senior counsel Sri. Grashious Kuriakose appearing for the appellant contended that on two grounds the conviction and sentence will have to be set aside. The first one is that PW1 was incompetent to detect the offence or the place where the offence took place falls within the jurisdiction of Aralam Police Station and PW1 was the Sub Inspector of Police at Iritty Police Station. PW1 does not have right to exercise jurisdiction outside the limits of Iritty Police Station as the power under the Act is determined by a notification issued by the State. That cannot be overridden by the instructions of any superior officers to PW1. In the case on hand, major portion of the detection is done by PW1, who is incompetent to do so and therefore, it is vitiated. The second contention taken is admittedly going by the evidence of PW1, he had affixed the seal on the sample. He had then handed over the accused, the articles and the documents to Aralam Police Station. Drawing

attention of this court to the forwarding note namely, Ext.P6, the sample seal affixed there is that of Aralam Police Station which according to the learned senior counsel, demolishes the entire prosecution case. PW1 has categoric that he had affixed his personal seal on the sample and the balance quantity. If that be so, the sample should contain the seal affixed by PW1. That is not there. Thus, there is no guarantee that the sample sent is the sample taken from the accused at the place of occurrence by PW1. The learned senior counsel pointed out that these above two grounds, the appellant is entitled to succeed.

10. The learned Public Prosecutor on the other hand attempted to sustain the conviction and sentence passed by the court below. It was pointed out by the learned Public Prosecutor that the minor discrepancies in the evidence need not be highlighted so as to give benefit to the accused. The crime is a heinous crime and the matter cannot be viewed lightly. The learned Public Prosecutor pointed out

the court below has analyzed the evidence in considerable detail and has come to the conclusion that the offences have been made out. Unless there are compelling reasons, this Court may not interfere.

11. In spite of the fervent plea made by the learned Public Prosecutor, it is felt that the appellant is entitled to succeed. Various officers were authorized to exercise the jurisdiction under the various provisions of the Act by a notification on 1967 issued by the State. The notification specifies the limit of territorial jurisdiction within which the officers can exercise various powers under the Abkari Act. Obviously, in the case on hand, PW1 was attached to Iritty Police Station while the incident had occurred within the jurisdiction of Aralam Police Station.

12. The detection by PW1 is therefore outside his jurisdiction and that is invalid in law. He cannot also under the instruction of the superior officers go outside his jurisdiction or the power of authority as the territorial limit of

exercise of jurisdiction is determined by the notification and there cannot be a delegation. The learned senior counsel is right in his submission that there was an unauthorized search and seizure.

13. More formidable is the second ground. PW1 has categorically stated that he had affixed the seal on the sample and on the MO1 can and if that be so, the sample should contain the seal affixed by PW1. But, in the case on hand, the sample seal affixed on the materials sent for chemical analysis is that of the Aralam Police Station.

14. In the light of the fact that there is incongruity between the evidence PWs 1 and 5 and it is possible for the accused to contend that there is no guarantee that the sample taken from the place of occurrence is the sample sent for chemical examination.

For the above reasons, this appeal is allowed. The conviction and sentence passed by the court below are set aside and the accused stands acquitted of all charges

levelled against him. His bail bond shall stand cancelled and he is set at liberty.

Sd/-
P.BHAVADASAN
JUDGE

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P.A. to Judge