

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

CRL.A.No. 393 of 2006 ()

**AGAINST THE JUDGMENT IN SC 182/2005 of ADDITIONAL SESSIONS COURT, FAST
TRACK COURT-II, PALAKKAD DATED 28-01-2006**

APPELLANT(S)/ACCUSED:

**MAYAN, S/O.VELAN,
AGED 67 YEARS, KOVILAKAM MATHAKKODE VEEDU, PAYILOOR
KOLLENGODE, CHITTUR, PALAKKAD DIST.**

BY ADV. SRI.RAJESH SIVARAMANKUTTY

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA REPRESENTED BY THE
EXCISE INSPECTOR, KOLLENGODE EXCISE RANGE
(CRIME NO.22/03), PALAKKAD DISTRICT BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT. S HYMA

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 393 of 2006

Dated this the 07th day of September, 2015

J U D G M E N T

The accused was prosecuted for the offences punishable under Section 55(a) and Section 8(2) of the Abkari Act. He was found guilty. He was therefore convicted and sentenced to suffer rigorous imprisonment for a period of one year and to pay a fine of ₹ 1 lakh with a default clause of six months. Set off as per law was allowed.

2. The prosecution case is that PW1, who was the Preventive Officer of Kollengode Excise Range, along with PW4 were conducting patrol duty as usual on 16.07.2003 also. When they reached in front of Surendra Modern Rice Mill, they found a person coming along the road carrying a bag in his hand. That person was intercepted and the bag was searched. The bag contained a white plastic can having 10 litres capacity containing a liquid to the brim. PW1 took a sample in a 180 ml bottle and had the balance sealed and

labelled. He prepared Ext.P1, seizure mahazar and Ext.P2 arrest memo. Crime was registered and PW6 investigated the case. Ext.P6 is the scene plan and Ext.P7 is the chemical examination report. After completing investigation, final report was laid before court.

3. Cognizance of the offence was taken by the Judicial First Class Magistrate, Chittur, who, on finding that the offences are exclusively triable by a Court of Session, committed the case to Sessions Court, Palakkad under Section 209 of the Cr.P.C.. The said court made over the case to Additional Sessions Court, Fast Track-II, Palakkad.

4. The latter court, on appearance of the accused and on receipt of records, framed charges for the offences punishable under Section 55(a) read with Section 8(2) of the Abkari Act. To the charge, the accused pleaded not guilty and claimed to be tried. The prosecution therefore had examined PWs 1 to 6 and had Exts. P1 to P7 marked. MOs 1 and 2 were got identified and marked.

5. 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 and has been falsely implicated. 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.

6. The court below, finding the prosecution evidence to be reliable and acceptable, found the accused guilty of both the offences and convicted and sentenced him as already mentioned. The said conviction and sentence are assailed in this appeal.

7. The learned counsel appearing for the appellant highlighted two points for consideration. According to the learned counsel, PW1 says of having taken samples is very evident from the records and the evidence of PW1 that only one sample was taken whereas, the law insists that at least

two samples should be taken. That is, one is to be sent to the Chemical analysis and other is to be retained in court for enabling the accused to seek chemical analysis report if he so chooses later on. The learned counsel also highlighted that the balance contraband article was produced as MO1 which though PW1 claimed that had the signature of the accused, in court, when it was produced, it was seen that there was no signature of the accused on the label. That affects the authenticity of the contraband article produced before court and raises a suspicion whether the incident had happened at all. It is further highlighted by the learned counsel for the appellant by pointing out that while PW1 would say that he was not aware whether the rice mill, before which the incident took place, was working at the relevant time, PW4, the person, who had accompanied PW1, is definite and certain that rice mill was working at the relevant time. PW4 would say that quite a few people had gathered at the spot whereas, PW1 has no such case.

8. The above aspects have been lost sight of by the lower court and those glaring aspects create a suspicion regarding the very detection itself. When there is doubt regarding the detection, the learned counsel pointed out that the benefit should go to the accused.

9. The learned Public Prosecutor appearing for the State on the other hand contended that the court below has analyzed the evidence in considerable detail and has found the evidence of PWs 1 and 4 convincing enough. There is no reason to suspect them. May be, according to the learned counsel, independent witnesses as usual turned hostile to the prosecution. But that is not very material in the light of clinching evidence furnished by PWs 1 and 4. The lower court has chosen to believe the evidence of PWs 1 and 4 and since it is not shown that the appreciation of evidence by the lower court of these witnesses is perverse, there is no justification for this Court to disbelieve them. Therefore, it is contended that no interference is called for with the

conviction and sentence.

10. Things are not as good as contended by the learned Public Prosecutor. Necessarily as enjoined by law, two samples had to be taken. Evidence is clear to the effect as spoken to by PW1 that he had taken only one sample. He also does not say that he obtained the signature of the accused on the sample. He, however, is definite that he obtained the signature on the label from the accused on MO1. But unfortunately, when the said MO1 was produced before the court, the label did not contain the signature of the accused. Further, it is surprising to note that PW1 does not speak about having obtained the signature of the independent witnesses namely PWs 2 and 3 either on Ext.P1 mahazar or on the MO1.

11. The evidence of PW4 is to the effect that he had seen only PW1 sign on the label. He is definite that at the relevant time, the rice mill was functioning whereas, PW1 says that he did not notice whether the rice mill was

functioning at all. Further, the evidence of PW4 is to the effect that about 10 people had gathered at the spot and they reached the place whereas, PW1 would say that PWs 2 and 3 were coming along the road and they alone were available.

12. These incongruities and inconsistencies in the evidence of PWs 1 and 4, as rightly pointed out by the learned counsel for the appellant, make the detection suspicious. Further, the issue gets more complicated by the taking of only one sample and also the absence of signature of accused in MO1. As already mentioned, there is no whisper by PW1 or PW4 that independent witnesses had either signed Ext.P1 mahazar or that they had signed on MO1 label.

13. The court below simply and blindly accepted the evidence of PWs in its enthusiastic endeavour to find the accused guilty.

14. This Court is fully aware of the fact that if the evidence of PWs 1 and 4 are convincing enough, the conviction can be based on those items of evidence even though they may be called interested in the sense that they are Officers who are detected the offence. But as noticed above, there are inconsistencies in their evidence and further, it is fortified by the absence of the signature of the accused in the label affixed on MO1.

15. In the facts and circumstances of the case, it is felt that the court below was not justified in coming to the conclusion that the prosecution has proved his case beyond reasonable doubt. At any rate, the accused is entitled to the benefit of doubt.

For the above reasons, this appeal is allowed. Conviction and sentence passed by the court below are set aside and it is held that the prosecution has failed to establish the case against the accused beyond reasonable doubt. He stands acquitted of the 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