

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

CRL.A.No. 403 of 2006 ()

**AGAINST THE JUDGMENT IN SC 165/2004 of ADDITIONAL SESSIONS COURT - I
FAST TRACK, (ADHOC), MANJERI DATED 23-01-2006**

**AGAINST THE ORDER IN CP 51/2003 of JUDICIAL FIRST CLASS MAGISTRATE -I,
PERINTHALMANNA**

APPELLANT(S)/ACCUSED::

**P. BALAKRISHNAN, S/O. ARAMUGHAN,
KURUVA AMSOM, PANG DESOM, PERINTHALMANNA.**

**BY ADVS.SRI.P.S.SREEDHARAN PILLAI
SRI.C.S.SUNIL
SMT.C.G.PREETHA
SRI.M.PRAVEESH**

RESPONDENT(S)/COMPLAINANT::

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

BY PUBLIC PROSECUTOR SMT. S. HYMA

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 403 of 2006

Dated this the 28th day of September, 2015

J U D G M E N T

The accused was prosecuted for the offences punishable under Section 8(1) and (2) read with Section 58 of the Abkari Act. He was found guilty. He was therefore convicted and sentenced to suffer rigorous imprisonment for three years and to pay a fine of ₹ 1lakh with a default clause of simple imprisonment for a period of six months. Set off as per law was allowed.

2. The prosecution case in brief is that while PW1 along with his team of officers were on routine patrol duty on 31.03.2000 in the afternoon, when they came near the Bhaskaran Padi junction, they found the accused coming along carrying a plastic bag. Seeing the excise officials, he panicked and that aroused suspicion in the mind of the officers. He was intercepted and the bag was examined. The bag contained a two litre capacity of Pepsi bottle with

some liquid in the same. On examination, it was found to be arrack. By Ext.P1 arrest memo, the accused was arrested and PW1 prepared Ext.P3 scene mahazar. Sample was prepared and sample taken was sealed and labelled. The rest of the contraband article was also packed and sealed and label affixed on the same. They returned to the Police Station and registered occurrence report as per Ext.P4. After preparing the property list etc., the accused was produced before court. Investigation was taken over by PW5. He had the articles sent for chemical analysis and received Ext.P8 report. He had recorded the statement of witnesses, completed investigation and laid charge before court.

3. The court before which the final report was laid, took cognizance of the offence. Finding that the offences are exclusively triable by a Court of Sessions, committed the case to the Sessions Court under Section 209 of Cr.P.C. The Sessions Court, Manjeri made over the case to Additional

Sessions Court - I, Fast Track (Ad hoc), Manjeri, for trial and disposal.

4. The latter court, on receipt of records and on appearance of accused before it, framed charges for the offences already made mention of to which the accused pleaded not guilty and claimed to be tried. The prosecution therefore had PWs 1 to 5 examined and Exts.P1 to P9 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. He also stated that while he was reloading articles from a vehicle, he was taken by the officers and he was falsely implicated.

6. 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.

7. On an appreciation of the evidence, the court below found no reason to disbelieve PWs 1 and 2 and accepting their evidence taken along with Ext.P3, found the accused guilty. Conviction and sentence followed.

8. Assailing the said conviction and sentence, the learned counsel appearing for the appellant pointed out that the finding of guilt rests solely upon the evidence of PWs 1 and 2 who are official witnesses and the court below was not justified in simply believing them without any independent evidence corroborating their version. The two independent witnesses, namely, PWs 3 and 4 had turned hostile to the prosecution and had given different versions regarding the incident. There is no reason to disbelieve the version given by them. These vital aspects in the case have been omitted to be noticed and there is nothing to show that there was actual seizure from the possession of the accused.

9. The learned Public Prosecutor on the other hand pointed out that the evidence of PWs 1 and 2 are consistent

and uniform and gets sufficient corroboration from Ext.P3, the contemporaneous document prepared by PW1. There is no suggestion to PWs 1 and 2 that they had any axe to grind against the accused so as to falsely implicate the accused. It is also pointed out by the learned Public Prosecutor that the case set up in the cross examination of PWs 1 and 2 is totally different from what is stated at the time of examination under Section 313 of Cr.P.C. which shows that the accused had no consistent case at all. These significant aspects weighed with the court below which rightly held the accused guilty. According to the learned Public Prosecutor, there are no grounds to interfere with the finding of the court below.

10. True, the case rests upon the evidence of PWs 1 and 2, who are the two officers of the excise department. Both of them give a uniform version of the incident. They say about having gone on patrol duty and having come across the accused carrying a plastic bag in his hand. Both

of them say that seeing them the accused panicked. Feeling suspicious, they intercepted the accused and the bag was seized which was found to contain a two litre Pepsi bottle with some liquid in it. Both of them say about how they detected the article to be arrack and also about taking samples and labelling and sealing of the sample as well and the balance quantity. Thus there is uniform and consistent version regarding the incident by PWs 1 and 2. As rightly pointed out by the learned Public Prosecutor, there is no suggestion to PWs 1 and 2 that they had any reason to falsely implicate the accused.

11. It is not as if that there is no independent evidence to support the version given by PWs 1 and 2. Ext.P3 mahazar prepared by PW1 at the spot gives the detailed narration of the incident that transpired at the place and it contains all details. PWs 3 and 4 have admitted their signatures on Ext.P3, though they give different version regarding the actual incident.

12. As rightly pointed out by the learned Public Prosecutor, the cross examination of PWs 1 and 2 indicated that the accused had a case that he had informed the officials about a bottle lying in a place where there was public function and he was falsely implicated. But at the same time, when examined under Section 313 of Cr.P.C., he had a different version altogether.

13. There was no suggestion to PWs 1 and 2 that the signatures found on the labels and samples and in the balance quantity seized, did not belong to the accused or the witnesses namely PWs 3 and 4.

14. The court below was therefore perfectly justified in holding that the evidence PWs 1 and 2 stand scrutiny when taken along with Ext.P3.

15. It is not the law that in all cases, the evidence of Police or Excise Officers have to find independent corroboration at the hands of other witnesses. It is quiet usual in such type of cases that the independent witnesses,

who are cited by the prosecution, turn hostile to the prosecution. Though they admit their signatures on the various documents, they narrate a different version of the incident. When it is found that there is no reason to doubt the version given by the Police Officers, it will be imprudent on the part of the court to insist for corroboration.

16. At any rate, in the case on hand, the evidence of PWs 1 and 2 get sufficient strength from Ext.P3 as already mentioned. The court below was therefore perfectly justified in holding the accused guilty.

17. Faced with above situation, the learned counsel appearing for the appellant pointed out that the sentence imposed is too harsh and is disproportionate to the offence committed by the accused. The quantity of contraband article seized is only one litre and that does not call for such a harsh sentence at all. Moreover, the court below has omitted to take notice of the age of the accused and failed to see that he should be given an opportunity to correct

himself.

18. There seems to be considerable force in the above submission. Considering the quantity seized from the accused and also his age, some leniency should have been shown with regard to the sentence so as to enable him to reform himself.

Thus, while confirming the conviction for the offence mentioned in the charge, the sentence imposed by the court below is set aside and instead, the accused is sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of ₹ 1 lakh, in default of payment of which, he is to suffer simple imprisonment for a period of two months. Set off as per law will be allowed.

Sd/-
P.BHAVADASAN
JUDGE

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P.A. to Judge