

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

CRL.A.No. 415 of 2006 ()

**AGAINST THE JUDGMENT IN SC 23/2005 of ADDITIONAL SESSIONS COURT, FAST
TRACK - III (ADHOC), MANJERI**

APPELLANT(S)/ACCUSED:

**THAZHETHETHIL CHANDRAN
S/O.RAMAN, PENGATTIRI AMSOM, KOLAPPADA DESOM
P.O.MARAYAMANGALAM, OTTAPPALAM TALUK
PALAKKAD DISTRICT.**

BY ADV. SRI.A.F.SEBASTIAN

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT. LILLY LESLIE

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 415 of 2006

Dated this the 15th day of December, 2015

J U D G M E N T

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

2. The prosecution case is that on 06.10.2002, PW1 was functioning as the Preventive Officer attached to Excise Range Office, Perinthalmanna. On the day of incident, when he was on routine patrol duty, he happened to come across the accused coming with a black can. Seeing PW1, he became nervous and that caused suspicion in the mind of PW1, who approached him and seized the can. The can was found to be full of some liquid. The can was opened and by taste and smell, he identified the contents as arrack. The

accused was arrested and Ext.P1 is the arrest memo. He would also say that he took a sample in a bottle of 375ml capacity. The sample and the can were separately sealed and labelled and PW1 affixed his personal seal on them. He then prepared Ext.P2 mahazar. The labels affixed on the sample and the can contained the signatures of the accused and PW1. He thereafter, took the accused and records and produced them before the Excise Inspector, Perinthalmanna. PW6 received the accused and the contraband articles presented before him and registered Crime No. 19/2002 as per Ext.P7 occurrence report. Ext.P8 is the property list prepared by him and the forwarding note prepared by him is Ext.P9. Further investigation was conducted by PW5. He recorded statement of witnesses and finally laid charge before court.

3. The court before which the final report was laid, took cognizance of the offence and finding the offence to be exclusively triable by a Court of Sessions, committed the

case to Sessions Court, Manjeri, under Section 209 of Cr.P.C. after following the necessary procedures. The said court made over the case to Additional Sessions Court, Fast Track-III (Adhoc), Manjeri, for trial and disposal.

4. The latter court, on receipt of records and appearance of the accused before the said court, framed charge for the offence punishable under Section 8(1) & (2) 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 6 examined and had Exts.P1 to P9 marked. MO1 was 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. Accepting the evidence of PWs 1 and 2 and also finding that Ext.P2 contains all the details and the prompt production of the accused and the articles before court, prompted the court below to come to the conclusion that the prosecution has succeeded in establishing its case against the accused person. Therefore convicted and sentenced him as already mentioned.

9. The main contention taken before this Court is that the Preventive Officer was not a competent officer and if that be so, the entire proceedings fall to the ground. Another ground taken is that except for the interested testimony of PWs 1 and 2, there is no independent corroborative evidence to prove the prosecution case.

10. Both the above grounds are meritless.

11. Going by the notification issued in 1967, it is clear that the Preventive Officers are notified officers under the Abkari Act and in the case on hand, PW1 is entitled to detect

and investigate the case. PW1 was the Preventive Officer at the relevant time and he is empowered to act under the Abkari Act. This contention therefore has necessarily to fail.

12. PWs 1 and 2 have given consistent and cogent version regarding the incident. They say how they happened to come across the accused and had seized the contraband article from him. They give a consistent version regarding the detection of the contraband article and also regarding taking of samples and sealing the same. Even though they were cross examined at length, nothing could be brought in their evidence to show that they are speaking falsehood. There is nothing to show that they had any ill-will or axe to grind against the accused.

13. It is true that the independent witness have turned hostile. But that does not mean that there is no corroboration at all. Ext.P2 is the so called scene mahazar. It gives the details of what happened at the place of incident and that sufficiently support the versions given by PWs 1

and 2. So, it could not be said that there is no corroborative evidence. Being a contemporaneous document brought into existence at the earliest point of time, Ext.P2 is entitled to be considerable weight. It cannot be said that it could have been manipulated or concocted.

14. If the evidence of PWs 1 and 2 are accepted, then the detection is proved. The Chemical Analysis Report namely, Ext.P4 shows the presence of ethyl alcohol in the sample submitted for chemical analysis. It could therefore be seen that there is no merit in any of the contentions raised by the learned counsel for the appellant.

This appeal is without merits and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

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P.A. to Judge