

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

CRL.A.No. 450 of 2006 ()

**AGAINST THE JUDGMENT IN SC 25/2005 of ADDITIONAL SESSIONS COURT, FAST
TRACK-I, PALAKKAD DATED 04-01-2006**

APPELLANT(S)/ACCUSED::

**MUTHU KUMARAN, S/O. NATARAJAN,
KOZHIKUDAM DESOM, SHOLAYAR, MANNARKKAD.**

**BY ADVS.SRI.N.NAGARESH
SRI.SHAJI THOMAS PORKKATTIL**

RESPONDENT(S)/COMPLAINANT::

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

BY PUBLIC PROSECUTOR SRI. C.K. JAYAKUMAR

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 450 of 2006

Dated this the 09th day of October, 2015

J U D G M E N T

The accused was prosecuted for the offence punishable under Section 55(g) of the Abkari Act. He was found guilty and therefore, he was convicted and sentenced to suffer rigorous imprisonment for three years and to pay a fine of ₹1 lakh with a default clause of six months.

2. PW1 at the relevant time was functioning as the Excise Range Preventive Officer at Agaly. On 20.06.2000 while he was on patrol duty, when he reached near the house one Nadarajan, he happened to see the accused standing with a jar on the bank of a canal. The jar was seized and it was found to contain 15 litres of wash. PW1 claims to have taken 500ml of sample and sealed and labelled the same. The label contained the signature of the accused, PW1 and the witnesses. PW1 would say that the

rest of contraband article was destroyed at the place itself. Ext.P1 is the mahazar prepared by him and Ext.P2 is the arrest memo. He also stated that the jar was also sealed and labelled. It contained the signature of the accused, witnesses and himself. He returned to the Police Station and prepared Ext.P3 occurrence report. He produced the articles before court on 26.06.2000. He prepared Ext.P4 forwarding note and obtained Ext.P5 certificate. Ext.P6 is the scene mahazar prepared by him. After completing investigation, charge was laid 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, Palakkad under Section 209 of Cr.P.C. after following the necessary procedure. The said court made over the case to Additional Sessions Court, Fast Track-I, Palakkad 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 offence punishable under Section 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 4 examined and had Exts.P1 to P6 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 was innocent. He stated that he has been falsely implicated.

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. Based on the evidence of PW1 taken along with contemporaneous documents, the court below found the

accused guilty and conviction and sentence followed.

9. Assailing the conviction and sentence, the learned counsel for the appellant pointed out that even though the detection was on 22.06.2000, the articles were produced before court only on 26.06.2000 and there is no property list seen marked. No explanation is offered for the delay of four days in producing the article before court. Non explanation of such delay is considered in the decision reported in **Ramankutty v. Excise Inspector, Chelannur Range** (2013 (3) KHC 308). For reasons best known to the prosecution, the Investigating Officer was also not examined. That, according to the learned counsel, has caused considerable prejudice to the accused. For the above reasons, the learned counsel submits that the conviction and sentence cannot stand.

10. The learned Public Prosecutor on the other hand pointed out that the accused and the documents were produced promptly before court and that ensures the

truthfulness of the prosecution case. There is no reason to disbelieve PW1, who is not shown to have any ill will to the accused. PW2 also supports PW1. The lower court, on an analysis of the evidence, has found that the accused was guilty and there is no reason to interfere.

11. The evidence regarding the detection of the offence is confined to the testimony of PWs 1 and 2. One is the Excise Inspector and the other is the Preventive Officer. Both of them say that on the date of incident, while they were on patrol duty, they came to know about the activity of the accused. He was found standing on the bank of a canal. He was seen mixing something in the jar. Feeling suspicious, PW1 says that the team of officers approached him and examined the contents of the jar and it turned to be wash. Both PWs 1 and 2 say that PW1 had taken 500ml as sample and labelled the same. Preparation of mahazar by PW1 is also spoken to by both these witnesses. Ext.P1 is the said mahazar. Ext.P2 is the arrest memo and the jar taken

in possession is MO1.

12. Even though these witnesses were cross examined at length, nothing inconsistent or contradictory could be brought out in their evidence. Further, if any corroboration is required, the same is furnished by Ext.P1 seizure mahazar which narrates in detail what transpired at the place.

13. But that is not the end of the case. The appellant has raised an issue that there was long delay in producing the articles before court and that remains unexplained. It is admitted by PW1 that detection was on 22.06.2000 and the articles were produced before court only on 26.06.2000. He offers no explanation whatsoever for the delay. It may be apposite at this point of time to refer to the decision reported in **Ramankutty v. Excise Inspector, Chelannur Range** (2013 (3) KHC 308) wherein, it was held that unexplained delay in producing the contraband before the court after seizure is fatal to prosecution case

14. Following the principle of the said decision, it follows that in this case also, there is unexplained delay in producing the properties before court. What is more surprising is that no property list is also seen produced before court.

15. The complaint that Investigating Officer was not examined cannot be lightly brushed aside in the context of the infirmities pointed out above, it would have been only proper that the Investigating Officer was examined so that the accused could confront him with various documents and statements made by the witnesses. That opportunity available to the accused has been denied.

16. For the above reasons, this Court is unable to uphold the conviction and sentence of the appellant for the offence already made mention of.

In the result, this appeal is allowed. The conviction and sentence passed by the court below are set aside. 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