

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

CRL.A.No. 455 of 2006 ()

**AGAINST THE JUDGMENT IN SC 254/2004 of ADDITIONAL SESSIONS COURT FAST
TRACK 1 (ADHOC), MANJERI DATED 01-02-2006**

IN CP 10/2004 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -II, PERINTHALMANNA

APPELLANT(S)/ACCUSED:

**CHANDRAN, S/O.POOLAKUZHIL VEETIL,
KUNHAN, CHEMMANIYODE AMSOM, DESOM
MELATTUR, PERINTHALMANNA TALUK.**

BY ADV. SRI.C.M.KAMMAPPU

RESPONDENT(S)/STATE/COMPLAINANT:

**STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.**

BY PUBLIC PROSECUTOR SMT. S. HYMA

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 455 of 2006

Dated this the 27th day of October, 2015

J U D G M E N T

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

2. The incident in this case occurred on 31.07.2003. On that day, PW1, the Excise Inspector and PW2, the Preventive Officer along with other officers had gone on routine patrol duty. When they reached in front of the house of one Radhakrishnan, they happened to see the accused coming from the opposite direction carrying a can with him. He was intercepted and feeling suspicious, the can was examined. It was revealed that the can contained 1½ litres of arrack. The accused was arrested and Ext.P1 arrest

memo was prepared. From the contraband seized, sample of 180ml in a bottle of 375ml capacity was taken by PW1. Both the sample and the balance quantity were sealed and labelled as is required under law and the label contained the signatures of the accused, witnesses and PW1. PW1 prepared Ext.P2 mahazar and after reaching the station, he prepared occurrence report which is Ext.P4. The accused, records and the articles seized were produced before court and as per the directions of the court, the contraband article was kept in custody of PW1. Ext.P5 is the property list. PW5 took over investigation. He received Ext.P8 Chemical Analysis Report and after completing the investigation, submitted final report 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-I (Adhoc), Manjeri, 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 8(1) and (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 5 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. According to him, he was falsely implicated.

7. 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.

8. The court below convinced about the prosecution case as per the testimony of PWs 1 and 2 and also the contemporaneous records namely, Ext.P2 mahazar, found the accused guilty. Conviction and sentence followed.

9. Assailing the conviction, the learned counsel appearing for the appellant contended that the conviction is solely based on the evidence furnished by the two official witnesses and that may not be proper in law when the independent witnesses examined have chosen to depose that they had not actually seen the seizure and the preparation of records by the Excise Officers concerned. It is also contended that it may not be proper to rely solely on the evidence of the official witnesses, especially, in case of this nature. When the statute insists that there would be two independent witnesses to search and seizure, it has some purpose to serve. If that be so, according to the learned counsel, the prosecution had not succeeded in establishing the case against the accused.

10. The learned Public Prosecutor on the other hand contended that it is not the law that the testimony of the official witnesses will always have to be corroborated by independent evidence. If the evidence furnished by the official witnesses is found to be credit worthy and acceptable, there is no justification for rejecting the same on the ground that there is no corroboration for the same. In the case on hand, even though PWs 1 and 2 were subjected to severe cross examination, nothing could be brought out from their evidence to show that they had any reason to falsely implicate the accused. Further, their testimony is corroborated by the narration in Ext.P2 mahazar which is a contemporaneous document. In addition to all these, according to the learned Public Prosecutor, the prompt production of the accused and the articles before the court further fortifies the prosecution case. These aspects were considered as convincing enough by the court below and there is no reason to take a different view. In short, the

contention is that there are no grounds made out to interfere with the conviction and sentence.

11. After having heard the learned counsel for the appellant and the learned Public Prosecutor and after having perused the records and evidence in the case, there seems to be considerable force in the submission made by the learned Public Prosecutor. PWs 1 and 2 are the officers who speak about the detection, among whom PW1 was the Inspector and PW2 was the Preventive Officer. They give consistent and uniform versions about the incident. Both of them say that they happened to come across the accused carrying a can while they were on routine patrol duty and they had seized the can and on verifying the contents of the can, it was found that it contained 1½ litres of arrack. Both of them speak about the arrest of the accused after preparing the arrest memo and also the preparation of Ext.P2 mahazar. The evidence of PW1 show that he had taken a sample of the contraband article and had sealed and

labelled the sample as well as the balance contraband article as is required under law. There is not even a remote suggestion to these witnesses that they had any reason to falsely implicate the accused.

12. Apart from the above fact, as rightly pointed out by the learned Public Prosecutor, the contents of Ext.P2 mahazar corroborates with the version given by PWs 1 and 2. It is a contemporaneous document prepared and considering the time at which it was prepared, it has to be said that there is little scope for manipulation or fabrication. Further, the prompt production of the documents and the accused and the contraband article before court lends further credence to the prosecution version of the incident.

13. The court below, after analysing the evidence, came to the conclusion that there is no reason to disbelieve the prosecution evidence especially, the evidence furnished by PWs 1 and 2 even though the independent witnesses namely PWs 3 and 4 had turned hostile to the prosecution

and betrayed the prosecution. It could not be said that the view taken by the court below is contrary to the evidence or is perverse. The conviction has therefore only to stand.

14. Faced with the above situation, the learned counsel for the appellant contended that considering the present age of the accused, the passage of time, and also the quantity of contraband seized, the sentence awarded is too severe and is not proportionate to the offence alleged to have been committed by the accused. The learned counsel for the appellant prayed for some leniency in this regard.

15. There seems to be considerable force in the above submission. It is seen from the records that the accused was in custody from 31.07.2003 to 24.08.2003 i.e. for almost nearly a month. Considering the quantity of article seized, the passage of time etc., it is felt that some leniency can be shown with regard to the sentence.

In the result, while confirming the conviction of the accused for the offence under Section 8(1) of the Abkari Act,

sentence awarded by the court below is set aside and the sentence of imprisonment stands confined to the period of detention already undergone by him as mentioned above and the accused is sentenced 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.

Sd/-
P.BHAVADASAN
JUDGE

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P.A. to Judge