

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA,
1937

CRL.A.No. 470 of 2006

AGAINST THE JUDGMENT IN SC 250/2003 of ADDL. SESSIONS COURT
(ADHOC)-I, KALPETTA.

APPELLANT(S)/ACCUSED:

M.CHACKO,
S/O.IYPE, RESIDING AT EDVAKA, MANANTHAVADY.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT. LILLY LESLIE.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
10-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 470 of 2006

Dated this the 10th day of December, 2015.

JUDGMENT

The douse accused was prosecuted for the offence punishable under Sections 55(a) of the Abkari Act. He was found guilty. Therefore, he was convicted and sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.1,00,000/-, in default, to undergo rigorous imprisonment for three months. Set off as per law was allowed.

2. The incident which gave rise to this case occurred on 8.12.2001. On that day, P.W.1, the Excise Inspector attached to the Excise Special Squad, Wayanad at about 1.30 in the afternoon along with P.W.2, the Excise Guard of the same department were checking vehicles near the waiting shed situated on the Kaattikkulam – Bavali road. A bus by name 'Starline' was seen coming along and it was signalled to stop. In the presence of the conductor and driver of the bus, search was conducted in the bus. It was found that

the accused, who was in the bus had a plastic packet with him. He was made to alight from the bus and the packet was seized. On opening the packet it was found to contain 30 packets of 100 ml each containing some liquid. One packet was opened and by taste and smell it was identified as arrack. Since it was an illegal act, he was arrested after preparing Ext.P1 arrest memo. The contents in one of the packets along with the remaining quantity in the packet which was opened for identification were emptied into a bottle having capacity of 375 ml and that was taken as sample. Seal was affixed and a label was also affixed and the label contained the signature of P.W.1, the accused and the witnesses. Ext.P2 mahazar was prepared on the spot. Rest of the contraband articles were also packed, sealed and labelled which also contains the signature of P.W.1, the accused and the witnesses. The accused, contraband articles and the documents were produced before the Excise Inspector at Mananthavady.

3. At the relevant time, P.W.3 was the Excise Range Inspector. On 8.12.2001 he received the accused, contraband articles and the documents and he produced the accused and the documents before court on the very same day. The contraband article seized was kept in the possession of P.W.3 and it was produced before court only on 11.12.2001. He also prepared and sent Ext.P6 forwarding note to have the sample sent for chemical analysis.

4. Investigation was taken over by P.W.6. He prepared Ext.P7 scene mahazar and obtained Ext.P8 chemical analysis report. He recorded statements of witnesses, completed investigation and laid charge before court.

5. The court, before which final report was laid, took cognizance of the offence. Finding that the offences are exclusively triable by a court of Sessions, the said court committed the case to Sessions Court, Kalpetta. The said court made over the case to Additional Sessions Court (Adhoc)-I, Kalpetta for trial and disposal.

6. The latter court, on receipt of records and on appearance of the accused framed charge for the offences punishable under Section 55(a) of the Abkari Act. To the charge, the accused pleaded not guilty and claimed to be tried. The prosecution therefore had P.Ws.1 to 6 examined and had Exts.P1 to P8 marked. M.Os.1 to 3 were identified and marked. After the close of the prosecution evidence, the accused was questioned under Section 313 Cr.P.C. wherein he denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent. Finding that the accused could not be acquitted under Section 232 Cr.P.C., he was asked to enter on his defence. He failed to adduce any evidence.

7. The court below impressed with the evidence furnished by P.Ws. 1 and 2 so also P.W.3, the Excise Inspector attached to the Range Office and also Ext.P2 mahazar and prompt production of the accused and the documents before the court on the very same date of detention found that the

evidence was overwhelming to come to the conclusion that the prosecution establishes the case against the accused. Accordingly, the conviction and sentence followed.

8. Learned counsel appearing for the appellant contended that even though the detection was on 8.12.2001, the thondi articles were produced only on 11.12.2001 before court and there is unexplained delay of four days in producing the contraband article before court. This, according to the learned counsel, is fatal to the prosecution case. It is also contended that there is no evidence as to who was in custody of the articles during this period. It is further contended that the person who had accompanied P.W.1 was an incompetent officer and that is fatal to the prosecution case. These aspects have been overlooked by the court below and a wrong conviction has been entered into.

9. Learned Public Prosecutor who appears for the State on the other hand contended that the evidence of P.Ws. 1, 2 and 3 taken along with Ext.P2 and also the fact that the

accused and the documents were promptly produced before court on the very same day of detection itself would show that the prosecution version is true. As far as the production of material objects are concerned, it was contended by the learned Public Prosecutor that 8th was a second Saturday, 9th was a Sunday, 10th was a Monday and on 11.12.2001 the articles were produced before court. P.W.3 has stated that he was under tremendous work pressure on 10.12.2001 and that is why he had produced the articles on 11.12.2001. As far as the Guard is concerned, he had only accompanied P.W. 1, who had detected the offence, and nothing else and he could not be treated as the detecting officer. It is therefore contended by the learned Public Prosecutor that no grounds are made out to interfere with the order of conviction passed by the court below.

10. After having heard learned counsel for the appellant and learned Public Prosecutor and after having perused the records, it becomes difficult to accept the

contention raised by the learned counsel for the appellant and it is felt that the learned Public Prosecutor is fully justified in her submission that conviction has to stand.

11. The detection is by P.W.1, the Excise Inspector and he was accompanied by a team of officers including P.W.2, the Excise Guard. P.Ws. 1 and 2 say that they were waiting in the waiting shed and checking the vehicles passing along. They happened to see a bus by name Starlines coming along and they signalled it to stop. The bus came to a halt and they conducted a search inside the bus. They could locate the accused holding a plastic packet with him. He was made to alight from the bus and on examination of the packet, it was found to contain 30 packets of 100 ml each containing some liquid. Both of them say about having identified the article and also sampling done by P.W.1. Both are also uniform in their version that both the sample and the balance contraband articles were sealed and labelled.

12. P.W.1 says that after the offence was detected and the accused was arrested, they were taken to P.W.3 on the very same day itself. P.W.3 says that he received the accused, contraband article and the documents from P.W.1 and registered crime as per Ext.P4 occurrence report. As already stated, on the very same day, i.e. on 8.12.2001 itself, the accused, documents and the occurrence report were produced before the learned Magistrate. He offers explanation for the delay in producing the articles before court. According to him, 8th was a second Saturday, 9th was a Sunday and 10th was a Monday and on that day he was under tremendous pressure of work and therefore he could not produce the articles on that day. He has also stated that from 8.12.2001 till 11.12.2001 the articles were in his safe custody. He therefore accounts for the custody of the articles also. In the facts and circumstances of the case, it could not be said that the delay has not been properly explained.

13. As rightly pointed out by the learned Public Prosecutor, the fact that P.W.2 is only a Guard is of little consequence. The detection was done by P.W.1, who is the Excise Inspector. He is a competent officer under the Act. P.W.2 was only accompanying P.W.1 and therefore he had no role to play.

14. The fact that accused, the documents and the occurrence report were produced before the learned Magistrate on the same day goes a long way in showing that the prosecution version is true. Even though P.Ws. 1 and 2 were cross-examined at length, nothing could be brought out from their evidence to show that they were not speaking truth. There is no motive attributed to them to implicate the accused.

15. The court below has considered the evidence in considerable detail and has come to the conclusion that the accused is guilty.

16. It could not be said that the finding is perverse or contrary to the evidence on record. An independent analysis of the evidence by this Court also lead to the same conclusion. It is only to be confirmed and I do so.

17. Faced with the above situation, learned counsel submits that the sentence imposed is very harsh considering the fact that almost 14 years have elapsed and some leniency be shown to the accused with regard to the sentence. It is seen from the records that at the time of commission of the offence the accused was 50 years of age and now he must have crossed 64 years.

18. While imposing the sentence, the court has to consider various aspects, i.e., the quantity seized, whether there were any criminal antecedents etc. In the case on hand, no criminal antecedents are pointed out. There is also nothing to show that subsequent to the release on bail, he has indulged in the same activity. However, as rightly pointed out by the learned counsel for the appellant, 14 years is too long a

period. Things might have settled down and considerable changes would have come about. Considering the various aspects, of course, making it clear that this Court is not taking the offence lightly, it is felt that some leniency is warranted in the matter of sentence.

For the above reasons, while confirming the conviction of the accused for the offence under Section 55(a) of the Abkari Act, the sentence imposed is set aside and instead the accused is sentenced to undergo simple imprisonment for one month and to pay fine of Rs.1,00,000/- with a default sentence of simple imprisonment for one month. Set off as per law is allowed.

P. BHAVADASAN,
JUDGE

sb.