

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

CRL.A.No. 477 of 2006 ()

AGAINST THE JUDGMENT IN SC 331/2004 of ADDL.SESIONS COURT
FAST TRACT COURT NO.III(ADHOC), MANJERI.

APPELLANT(S)/ACCUSED:

PRABHAKARAN, S/O.KANARAN,
KAVUNANCHERY HOUSE, POOKKOTTUR,
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S)/STATE:

THE STATE OF KERALA,
REPRESENTED BY THE EXCISE INSPECTOR,
MALAPPURAM EXCISE RANGE – THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKLULAM – KOCHI-31.

BY PUBLIC PROSECUTOR SMT. S. HYMA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
17-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 477 of 2006

Dated this the 17th day of September, 2015.

JUDGMENT

The accused was prosecuted for the offences punishable under Sections 8(1) and 8(2) of the Abkari Act and was found guilty. He was convicted and sentenced to suffer rigorous imprisonment for four years and to pay fine of Rs.1,00,000/-, in default, to undergo simple imprisonment for six months. Set off as per law was allowed.

2. The incident is said to have occurred on 26.2.2003. P.W.1, the Assistant Excise Inspector, was doing patrol duty along with other officers and when they reached a junction called Pullara, they received information that a person was vending illicit liquor on the way at Ambalappadi. They proceeded to the place after taking two independent witnesses along with them, and they reached the place of incident. The accused tried to escape and P.W.1 was successful in

preventing the accused from doing so. The accused was holding a bottle having capacity of 700 mls. of liquor and from that he was pouring 100 mls. into a glass and giving it to a person standing there. On examination of the content, it was found to be arrack. They have also seized a can having the capacity of 5 litres containing 3 litres of liquid. Same was also found to be arrack. He speaks about having taken samples from those and he says about the labelling of the articles, affixing of signature of the accused, and the witnesses present there. He also recovered certain currency notes which according to the prosecution were procured by the sale of illicit liquor. Ext.P2 is the mahazar prepared by P.W.1 and Ext.P3 is the arrest memo. He went to the Range Office and handed over the articles and the accused. Ext.P5 is the property list and the forwarding note is Ext.P6. P.W.5 took over investigation, recorded statements of witnesses and laid charge before court.

3. The court, before which final report was laid took cognizance of the offences. Finding that the offences are exclusively triable by a court of Sessions, the said court committed the case to Sessions Court, Manjeri. 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 on appearance of the accused framed charge for the offences punishable under Sections 8(1) and 8(2) of the Abkari Act. The accused pleaded not guilty and claimed to be tried. The prosecution therefore had P.Ws.1 to 5 examined and had Exts.P1 to P9 marked. After the close of the 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 he was taken by force and coerced to sign certain documents. 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.

5. Relying on the evidence furnished by P.W.1 and contemporaneous documents, the court below found the accused guilty and conviction and sentence as already mentioned followed. The said conviction and sentence are assailed in this appeal.

6. Learned counsel for the appellant assailing the conviction and sentence raised only one point for consideration. Learned counsel contended that the detention and the registration of the crime is by Assistant Excise Inspector who was an incompetent officer and he had no authority to either detect or register the crime. Reliance is placed on notification, S.R.O. No. 234/1967 in support of her contention that detention and steps taken by such a person cannot have any sanction of law. She relied on the decisions

reported in Subramaniyan v. State of Kerala (2010 (2) K.L.T. 470), Sasidharan v. State of Kerala (2012 (2) K.L.T. 392) and Hamsa Koya v. State of Kerala (2015 (2) KHC 206).

7. There seems to be considerable force in the above submission. By the said notification, competent officers were Preventive Officers as far as the Excise Department is concerned. The Act defines 'Abkari Officer' and also mentions the rights and powers. In this context Sections 4, 5 and 70 are relevant. Considering the act of incompetent officer in detecting the offence and proceeding with the steps, it has been held that detection by an incompetent officer is invalid in law especially in the light of the fact that detection by an incompetent officer has no legal existence and proceedings initiated on that basis is null and void.

8. In the light of the dictum laid down in the above decisions, it is unnecessary to go into the other issues involved in this appeal.

For the above reasons, this appeal is allowed, the conviction and sentence awarded to the appellant are set aside and the appellant is acquitted of the charges levelled against him. His bail bond shall stand cancelled and he is set at liberty.

P. BHAVADASAN,
JUDGE

sb.