

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

CRL.A.No.495 of 2006

AGAINST THE JUDGMENT IN SC 681/2004 of ADDL.SESIONS COURT
(ADHOC)-II, THODUPUZHA DATED 06-02-2006

APPELLANT/ACCUSED:

ARUL RAJ, S/O.CHINNASWAMY,
LOWER DIVISION ESTATE LAYAM, MANJUMALA KARA,
MANJUMALA VILLAGE.

BY ADVS.SRI.C.M.TOMY
SRI.MATHEW SKARIA

RESPONDENT/COMPLAINANT:

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

BY SMT. S. HYMA, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 495 of 2006

Dated this the 2nd day of November, 2015.

JUDGMENT

The accused was prosecuted for the offence punishable under Section 55(a) and (i) of the Abkari Act. He was found guilty. He was therefore convicted and sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs.1,00,000/- with a default sentence of rigorous imprisonment for three months.

2. P.W.4, the Circle Inspector of Police, Kumily, on 8.9.2001 was engaged in the investigation of Crime No. 255 of 1999 and while returning to the police station, he got reliable information that in a bunk shop at Manjumala Factory, illicit liquor is being sold. He went to the place, search memo was prepared and sent to court. The bunk shop was searched. There they found a bottle having the capacity of 750 ml. containing 550 ml of liquid. It contained the label 'Ralico

Windies xxx Rum. P.W.4 says that there were 6 glasses which had the smell of liquor. Ext.P1 mahazar was prepared and articles were seized. He returned to the station and handed over the articles to the officer there.

3. P.W.5 was in charge of the station at the relevant time. On the basis of the mahazar produced, he prepared crime and occurrence report and registered Crime No. 186 of 2001 as per Ext.P4. He says that subsequent investigation was done by the Sub Inspector.

4. P.W.6 took over investigation, recorded statements of witnesses and he had produced the accused before court. He had the property list produced before court. Forwarding note was also produced before court.

5. P.W.7 completed investigation and laid charge before court.

6. The court, before which final report was laid took cognizance of the offences. Finding that the offence is

exclusively triable by a court of Sessions, the said court committed the case to Sessions Court, Thodupuzha. The said court made over the case to Additional Sessions Court Fast Track (Adhoc)-II, Thodupuzha for trial and disposal.

7. The latter court, on receipt of records and on appearance of the accused, framed charge for the offence punishable under Section 55(a) and (i) of the Abkari Act. To the charge, the accused pleaded not guilty and claimed to be tried. The prosecution therefore examined P.Ws. 1 to 8 and had Exts.P1 to P8 marked. M.O. 1 was got identified and 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. 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. Based on the evidence of P.Ws.3 and 4 and also Ext.P1 mahazar, the court below formed the opinion that the offence against the accused has been established beyond reasonable doubt and was convicted and sentenced as already mentioned. The said conviction and sentence are assailed in this appeal.

9. Assailing the conviction and sentence, learned counsel pointed out that on the facts of the case neither Section 55(a) nor Section 55(i) is attracted to the facts of the case. For Section 55(a) to be attracted, the possession should be during the course of export or import and there is no such allegation in the charge. As regards the allegation regarding Section 55(i) is concerned, all that is seen is the presence of glasses and there is no proof of any sale conducted by the accused. Learned counsel also pointed out that as admitted by the prosecution, contraband seized is IMFL and the

quantity seized is 550 ml. As per the provision, a person should possess 2 and odd litres and if that be so, no offence is made out.

10. First of all, it is to be noticed that the incident took place on 8.9.2001 and the articles were produced before court only on 13.9.2001. Further the mere seizure of glasses may not lead to the inference that there has been sale of liquor illegally. No one else was seen in the place nor was seen sitting at the place at the relevant time. Merely because two glasses were seized from the place, it does not lead to the inference that sale is being carried on in that place.

11. As already stated, there is want of evidence regarding the sale of a liquor, then only Section 63 can be attracted. Then the question is whether the accused is in possession of excess quantity. Obviously that is not. He was found in possession of 550 ml which is perfectly within the permissible limit. It is also found that on the facts of the case

Section 55(a) cannot be attracted. For the above reason, this court is unable to uphold the finding of the court below that the accused is guilty of the offences alleged against him.

For the above reasons, this appeal is allowed, the conviction and sentence passed by the trial court are set aside and it is held that the prosecution has not succeeded in proving the guilt of the accused beyond reasonable doubt. The accused is acquitted of the charges levelled against him. His bail bond shall stand cancelled and he is set at liberty.

P. BHAVADASAN,
JUDGE

sb.