

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

CRL.A.No. 496 of 2006 ()

**AGAINST THE JUDGMENT IN SC 181/2004 of ADDITIONAL SESSIONS COURT FAST
TRACK -I (ADHOC), MANJERI DATED 17-02-2006**

APPELLANT(S)/ACCUSED.:

**CHARU, S/O.KORUKUTTY,
CHETTIKUNNIL HOUSE, OORNGATTIRI, MALAPPURAM DISTRICT.**

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S)/STATE.:

**THE STATE OF KERALA, REPRESENTED BY THE
EXCISE INSPECTOR, MANJERI EXCISE RANGE
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM, KOCHI 31.**

BY PUBLIC PROSECUTOR SMT. LILLY LESLIE

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 496 of 2006

Dated this the 20th day of November, 2015

J U D G M E N T

The accused in this case was prosecuted for the offences punishable under Sections 55(a) and 8(1) of the Abkari Act. He was found guilty. He was therefore convicted and sentenced to suffer rigorous imprisonment for two years and to pay a fine of ₹1 lakh with a default clause of simple imprisonment for a further period of six months. Set off as per law was allowed.

2. The incident which gave rise to the case occurred on 08.11.2001. PW1, who was functioning as the Circle Inspector of Excise Range, Manjeri, along with his team of officers went on routine patrol duty. By about 2.00 p.m., when they reached a place called Chettikunnu, they happened to see a person walking along the road carrying a can. Feeling suspicious about the can, he was intercepted and the can was seized. The can had a capacity of 5 litres

and it contained 1½ litres of liquid. By smell and taste, it was identified as arrack. Ext.P1 arrest memo was prepared and the accused was arrested. From the contraband seized, 200ml of sample was taken in a bottle having a capacity of 375ml. Sample was sealed and labelled and the label contained the signatures of the witnesses and PW1. Ext.P2 mahazar was prepared at the spot. Notice of arrest was given to the relative of the accused. Thereafter, PWs 1 and 2, along with the accused, the contraband article and the documents returned to the Station. PW5 was the Excise Inspector of Nilambur Excise Range at the relevant time. At about 6.00 p.m., when PW1 produced the accused, seized articles and the records before him, he received the same and on the basis of those documents, he registered crime as per Ext.P5 occurrence report. He also prepared the list of property which is Ext.P6 and the forwarding note which is Ext.P7. Further investigation was conducted by PW6, who recorded statements witnesses, obtained Chemical Analysis

Report and laid final charge before court.

3. The court before which the final report was laid, took cognizance of the offence and finding the offences 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, (Ad hoc), 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 offences punishable under Sections 55(a) and 8(1) 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 6 examined and had Exts.P1 to P9 marked. M.O.1 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.

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. The court below, presumably impressed by the evidence of PWs 1 and 2, which are found to be consistent and uniform fortified by Ext.P2 mahazar, which narrates the entire details coupled with the fact that there was prompt production of the accused and the articles before court, felt that the prosecution has succeeded in establishing the case against the accused. Conviction and sentence followed.

9. Assailing the conviction and sentence, the learned counsel appearing for the appellant raised the contention that investigation and the final report was laid by an incompetent officer as per the provisions of the Act. Referring to the final report, it was pointed out that the final report was laid by the Circle Inspector of Excise, Excise

Enforcement and Anti Narcotic Special Squad, Malappuram. The contention taken is that the incident happened at Manjeri and an officer at Malappuram has no jurisdiction to conduct investigation and lay final report. Such a report even if filed is *non-est* in law and no proceedings can be initiated on that basis. For the above proposition the learned counsel relied on the decision reported in **Haridas v. State of Kerala** (2015 (1) KLT 958).

10. The learned Public Prosecutor contended that there is no evidence at all to show that at the relevant time, the Investigating Officer was a Circle Inspector of Excise, Special Squad, Malappuram and also there is nothing to show that the jurisdiction of the Excise Enforcement and Anti Narcotic Special Squad constituted is confined to any particular region. If the appellant had any such contention, it was for him to bring out in cross examination of PW6 his status and the region to which his powers are confined to. Without making any such attempt, now to say that he is

incompetent is without any basis. The learned Public Prosecutor contended that it could not be treated as pure version of law as claimed by the appellant as it involves mixed questions of law and facts. If that be so, the accused should have brought out in the cross examination of PW6 that he was incompetent to investigate in the case on hand. Having not done that, it comes with little grace now to take that contention. The learned Public Prosecutor pointed out that the lower court was considerably impressed with the evidence of PWs 1 and 2 and also felt that the other documents produced in the case are sufficient to warrant a conclusion that the offence has been made out. There are no grounds made out to interfere the said finding.

11. After having heard the learned counsel for the appellant and the learned Public Prosecutor and after having perused the records, it is felt that there is considerable force in the submission made by the learned Public Prosecutor. If the appellant had a case that PW6 was incompetent to act

as an Investigating Officer and lay final report. these aspects should have been put to him when he was in the box. Not even a suggestion was made to the witness that he is incompetent to investigate or to file a final report. The position here is not similar to a case where the particular officer is confined to a particular region. This is a special squad constituted for the purpose of detecting and preventing the commission of crime. It is necessary for the appellant to show that the jurisdiction of such a squad does not extend beyond a particular region and that the restriction has been infringed in the case on hand. Without attempting to make out such a case, the case now put forward that PW6 was incompetent to investigate cannot be countenanced. That contention has to necessarily fail.

12. As noticed by the court below, the evidence of PWs 1 and 2 are consistent, cogent and convincing enough. Both of them say about the manner of detection, the sampling etc. and there is nothing suggested to them that

they had oblique motive or any reason to falsely implicate the accused. They say about the sampling also.

13. If further evidence of the matter is required, it is furnished by Ext.P2, the mahazar said to have been prepared at the spot. It contains all the details. Further, as rightly noticed by the court below, the prompt production of these documents negatives any possible manipulation or fabrication. It is not shown that any statement made by PWs 1 and 2 in their cross examination casts dent in their testimony and would make their evidence suspicious. They give a detailed narration of what transpired and how the crime was registered.

14. The fact that the independent witnesses have turned hostile, does not help the accused. It is trite that if the evidence of the Police Officers or the Excise Officers are found to be convincing and cogent and is found to be acceptable, the mere fact that there is no independent witness to support the prosecution, it is not a ground to

reject the prosecution evidence available on record. Thus, viewed from any angle, it could not be said that the finding of the court below that on the basis of the evidence on record, the accused has committed the offence alleged against him, seems to be fully justified. The conviction has only to stand.

15. Faced with the above situation, the learned counsel appearing for the appellant pointed out that the sentence imposed is very harsh and is totally disproportionate to the offence committed. It is further pointed out that almost 15 years have elapsed and accused is advanced in age. There is nothing to show that the accused has a bad antecedent or that subsequently, he is involved in such incidents. It is therefore prayed that leniency be shown with regard to the sentence. The learned counsel for the appellant also emphasized that the quantum of contraband seized is only 1 ½ litres.

16. After having heard the learned counsel for the appellant and the learned Public Prosecutor and after having given anxious consideration to the submission, it is felt that there is some merit in the submission. The quantity seized is only 1½ litres. There is nothing as of now to show that he is a habitual dealer in such contraband articles. He might have on one occasion done the illegal act. But, as already stated, there is nothing to show that he is a regular vendor.

Considering all these factors, it is felt that the sentence needs to be reduced. While confirming the conviction of the accused for the offences punishable under Sections 55(a) and 8(1) of the Abkari Act, the sentence imposed by the court below is set aside and instead, he is sentenced to suffer simple imprisonment for a period of one month and to pay a fine of ₹1 lakh, with a default clause of two months simple imprisonment. Set off as per law will be allowed.

Sd/-
P.BHAVADASAN
JUDGE

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