

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

CRL.A.No. 528 of 2006 ()

**AGAINST THE JUDGMENT IN SC 278/2004 of ADDITIONAL SESSIONS COURT, FAST
TRACK I, (ADHOC), MANJERI**

IN CP 23/2004 OF JUDICIAL FIRST CLASS MAGISTRATE, NILAMBUR

APPELLANT(S)/ACCUSED:

**KOCHUKOCHU @ SADANANDAN
S/O.RAGHAVAN, KURUMBALANGODE, NILAMBUR
MALAPPURAM DISTRICT.**

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S)/STATE:

**STATE OF KERALA
REPRESENTED BY THE EXCISE INSPECTOR
NILAMBUR 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 27-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 528 of 2006

Dated this the 27th day of November, 2015

J U D G M E N T

The accused faced trial for the offence punishable under Section 8(1) of the Abkari Act. He was found guilty. He was therefore convicted and sentenced to suffer rigorous imprisonment for three years and to pay a fine of ₹1 lakh with a default clause of simple imprisonment for a further period of one year. Set off as per law was allowed.

2. The incident in this case is alleged to have occurred 01.08.2002. PW1 was the Circle Inspector of Excise Enforcement and Anti Narcotic Special Squad, Malappuram at the relevant time. He along with other officers on getting information that the accused is dealing with illicit liquor in his house, proceeded to the place after preparing the search memo. On reaching the house of the accused and on searching the house, from the room on the eastern side, a can of 2½ litres capacity was recovered which contained

some sort of a liquid. By taste and smell, they convinced that it was arrack. Sample of 180ml was taken and both the sample as well as the balance contraband article seized were sealed and labelled. They were also able to recover a 2½ litres can from the outside the kitchen containing ½ litre of arrack and that was also seized. That was also sealed and labelled. The accused was arrested and Ext.P1 mahazar was prepared. The search list prepared by him is Ext.P2. The arrest memo is Ext.P3. After returning to the Station, crime was registered as per Ext.P5. The articles, documents and the accused were produced before court by PW6, who received the articles, the accused and the documents. Ext.P8 was prepared and the articles seized were produced before court as per Ext.P9 property list and forwarding note is Ext.P10. PW7 conducted further investigation of the case, recorded statement of witnesses, obtained Ext.P11 Chemical Analysis Report and 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 (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 charge for the offence punishable under Section 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 7 examined and had Exts.P1 to P12 marked. MOs 1 and 2 were 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 was 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. On the basis of the evidence furnished by PWs 1 and 2 and also based on the fact that the contemporaneous documents and also the testimony of PWs 1 and 2, the court below found that the offence has been established. Conviction and sentence followed.

9. Sri. Babu S. Nair, the learned counsel appearing for the appellant contended that there is a serious flaw in this case and that is neither in the mahazar nor in the occurrence report and the related documents except the search list Ext.P2, house number is shown even though PWs 1 and 2 categorically say that they were aware of the house number. Therefore the evidence of PW4, the Secretary of the Panchayath is of no consequence. There is no justification or reason as to why the Detecting Officer, who

prepared Ext.P1 mahazar and also registered the crime, did not mention the house number at all. The learned counsel pointed out that the occurrence report must have been prepared after preparation of Ext.P2 search list and if that be so, it would be inconceivable that the occurrence report would not contain the house number. There is thus nothing to show that the house number PP./XIV/268 of Nilambur Village, belonged to the accused as could be seen from Ext.P7 ownership certificate. On this short ground, the learned counsel submits he has to succeed.

10. The learned Public Prosecutor pointed out that Ext.P2, the search list contained the number and that is sufficient in law. This was further fortified by Ext.P7 issued by PW4. The court below found that there is sufficient material to show that the house from where contraband article was seized belonged to the accused. Thus, there is no merit in the contention raised by the learned counsel for the appellant.

11. PWs 1 is the officer who detected the offence and PW2 accompanied him. PWs 1 and 2 would say that on getting reliable information, a search was prepared and thereafter they proceeded to the spot. From the eastern room, a can was recovered and so also from the back side of the kitchen. Each was found to contain arrack. Both of them say about having taken samples and also the preparation of the mahazar, search list etc.. Even though these witnesses were cross examined at length, nothing inconsistent or contradictory could be brought out in their evidence to show that they had any oblique motive or they had any axe to grind against the accused to falsely implicate him.

12. Ext.P1 is the mahazar and Ext.P2 is the search list. The occurrence report is produced as Ext.P5. It is true that in Ext.P2, the number of the house tallies with the number shown in Ext.P7. But what is surprising is that in Ext.P1 mahazar which is the immediate document prepared on

detection, the number is not seen mentioned or marked. So also in the occurrence report. One must remember that the occurrence report is prepared after Ext.P2 is drawn up and being the earliest document, Ext.P1 must contain the house number. PW1, who prepared Ext.P1, admits that in the mahazar, the house number is not shown. PW2, who was accompanying PW1, categorically says that they were aware of the house number, but they did not mention it in the mahazar. No satisfactory explanation therefore is given for not mentioning the house number in the mahazar and in the occurrence report. It is surprising to note that even the arrest memo also does not discuss the house number. The claim of the prosecution that he was arrested from his house. The arrest notice, Ext.P4 also does not contain the house number.

13. Under these circumstances, the learned counsel for the appellant is justified in his submission that the mere mention of house number in Ext.P2 search list may not by

itself is sufficient to warrant a conclusion that the seizure was from the house owned and possessed by the accused. If as a matter of fact, the house belonged to the accused, surely and certainly, the number would have been reflected in the mahazar, occurrence report, arrest memo and arrest intimation which are vital documents as far as these proceedings are concerned.

14. The learned counsel for the appellant may be justified in his submission that a reasonable doubt is created regarding the claim made by the PWs 1 and 2 about the detection of offence. It is not safe to rely on Ext.P2 alone to come to the conclusion when other crucial documents do not mention the number. One is to remember that PWs 1 and 2 deposed that they were aware of the number of the house very first instance itself. One fails to understand what restrained them from mentioning the number in the vital documents.

15. Therefore, this Court is unable to agree with the finding of the court below that the seizure was from the house possessed by the accused.

For the above reasons, this appeal is allowed. The conviction and sentence passed by the court below are set aside and the accused stands acquitted of all charges levelled against him. His bail bond shall stand cancelled and he is set at liberty.

Sd/-
P.BHAVADASAN
JUDGE

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P.A. to Judge