IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

CRL.A.No. 726 of 2004 ( )

AGAINST THE JUDGMENT IN SC 449/2001 of ADDL. DISTRICT & SESSIONS COURT, VADAKARA DATED 08-03-2004

APPELLANT(S)/ACCUSED::

KUMARAN, S/O. CHATHU,
NEELIYANGATTUMMAL HOUSE,
KAYAKKODI AMSOM,
NEDUMANOOR DESOM,
VADAKARA TALUK.

BY ADV. SRI.K.PRAVEEN KUMAR

RESPONDENT(S)/COMPLAINANTS & STATE::
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1. THE SUB INSPECTOR OF POLICE,
NADAPURAM.

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

R1 & R2 BY GOVERNMENT PLEADER SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 22-05-15, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl. Appeal No.726 of 2004

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Dated this the 22nd day of May, 2015

JUDGMENT

This appeal is preferred against the conviction and sentence in S.C.449/2001 of Additional District & Sessions Judge Vadakara for offence punishable under Section 55(a) of the Abkari Act.

2. The prosecution allegation was that on 28.12.99 at 12.30 p.m., the Excise Preventive Officer, Excise Range Office, Nadapuram was conducting patrol duty within his jurisdiction with his Excise party, when they reached in front of the house of one Edathil Dasan, the accused was found coming along the Panchayath Road carrying a can having capacity of 5 litres. On seeing the Excise party, appellant became perplexed and the Excise party intercepted him, examined the contents in the can and identified as illicit arrack. Immediately, the appellant was arrested and contraband articles were seized after preparing a mahazar. Reaching at the Excise Office, they registered a crime No.19/99 under Section 55(a) of the Abkari Act. After completing investigation, charge sheet was filed before Judicial First Class Magistrate Court, Nadapuram. The case was committed to Sessions Court, from there it was transferred to

Additional Sessions Court, Vadakara.

3. To prove the allegation, the prosecution examined PW1 to PW6 and marked Exhibits P1 to P9 and MO1 in evidence. The incriminating circumstances brought out in evidence were denied by the appellant while questioning him under Section 313 Cr.P.C. He was also heard under Section 232 Cr.P.C, and did not adduce any defence evidence. The trial court after analyzing the evidence convicted the accused under Section 55 (a) of the Abkari Act.

4. The learned counsel appearing for the appellant contended that there was dispute with regard to the date of occurrence. In Ext.P1, the date was mentioned as 22.12.99, but in other documents, it was recorded as 28.12.99. This creates a doubt in the credibility of the alleged seizure. There is no signature in MO1. The trial court ignored the above inconsistency, therefore the appellant is entitled to get the benefit of doubt.

5. The learned Public Prosecutor contended that the date 22.12.99 is only a clerical mistake committed by PW1 at the time of putting his signature in Ext.P1 itself, the correct date was mentioned as 28.12.99. This clerical mistake was rectified by PW1 and reasons are stated by the appellant to discredit his

evidence other than the date mentioned as 22.12.99. There was proper sampling and the accused and the detecting officer had signed in the sample packets sent for chemical examination. When the report of chemical analysis shows no tampering of the seal, the appellant is not entitled to get the benefit of doubt in this case.

6. While adverting to the arguments advanced by the appellant, first I have verified the oral testimony of PW1 and the Ext.P1 arrest memo. PW1, the Preventive Officer deposed that while he was conducting patrol duty within his jurisdiction on 28.12.99 at 12.30 p.m., the appellant was found carrying a can at the place of occurrence and he intercepted him and inspected the can and realized that the can contained illicit liquor, for that he tasted the liquid and identified the smell of the liquid and confirmed as illicit arrack. Thereafter, PW1 arrested the appellant and seized the contraband articles from which he took sample of 180 ml. in a bottle, which was sent over to the forensic laboratory for chemical examination. I have perused Ext.P1 arrest memo in which it was mentioned that on 28.12.99, at around 12.30 p.m., appellant was arrested at Kakkad Bazar in Kunnummel Villege, Vadakara Taluk. Even though he stated that he arrested the appellant, no documents

have been produced before this court to show that PW1 arrested the appellant. In Ext.P1, Excise Inspector, Nadapuram range put his signature on 22.12.99. Ext.P2 was prepared by the Preventive Officer and this create a doubt in the credibility of the alleged story. Moreover, Excise Inspector put his date of signature in Ext.P1 as 22.12.1999. If that be the position, the alleged seizure is to be doubted. The trial court observed that the independent witness also not signed in MO1. The cumulative effect of these discrepancies shows that the appellant is entitled to get the benefit of doubt.

7. The Apex Court in ***State of U.P. v. Iftikhar Khan and Others AIR 1973 SC 863*** held that;

> "If the said evidence really raises a reasonable doubt in the mind of the court regarding the participation in the crime by the first respondent, that doubt must be resolved in his favour. In this context, it is pertinent to quote the following observations in the decision in AIR 1972 SC 975 (supra):"
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> "The benefit of doubt to which the accused is entitled is reasonable doubt - the doubt which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind which fights shy - though unwittingly it may be - or is afraid of the logical consequences, if that benefit was not given, or as one great Judge said it is not the doubt of a vacillating mind that has not the moral courage to decide but shelters itself in a vain and idle scepticism."

8. In another decision, ***Sharad Birdhichand Sarda V. State of Maharashtra AIR 1984 SC 1622,*** Apex Court held

that:

> "on the evidence two possibilities are available or open, one which goes in favour of the prosecution and other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt."

9. The infirmity highlighted in this case shows that a conviction cannot be recorded on the basis of available facts. The evidence of the Excise Official is not fully reliable, unless it is corroborated by reliable independent evidence. The rule of prudence shows that after scrutiny, if it inspires no confidence in their testimony, it cannot form the basis for a conviction. Hence, I am of the view that there is discrepancy in Ext. P1 arrest memo and Ext.P2 seizure mahazar, which will affect the credibility of the prosecution case.

In the result, conviction and sentence passed by the trial court under Section 55(a) of the Abkari Act is set aside and this appeal is allowed.

P.D. RAJAN,
JUDGE

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