

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

CRL.A.No. 550 of 2006 ()

**AGAINST THE JUDGMENT IN SC 98/2004 of ADDITIONAL SESSIONS COURT(ADHOC)
III, KOLLAM**

IN CP 100/2003 OF JUDICIAL FIRST CLASS MAGISTRATE - I, KARUNAGAPPALLY

APPELLANT(S)/ACCUSED::

**RAMAKRISHNAN, S/O. RAGHAVAN,
EAZHATHENGIL, MUZHANGODI MURI, THODIYOOR VILLAGE
KARUNAGAPPALLY TALUK, KOLLAM DISTRICT.**

BY ADV. SRI.B.MOHANLAL

RESPONDENT(S)/COMPLAINANT::

**STATE OF KERALA, REPRESENTED BY
THE EXCISE RANGE INSPECTOR, KARUNAGAPPALLY
KOLLAM DISTRICT THROUGH THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT. LILLY LESLIE

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 550 of 2006

Dated this the 26th day of October, 2015

J U D G M E N T

The accused faced prosecution for the offence punishable under Section 55(a) of the Abkari Act. After trial, he was found guilty. He was therefore convicted and sentenced to suffer simple imprisonment for a period of one year and to pay a fine of ₹1 lakh with a default clause of three months. Set off as per law was allowed.

2. On 03.10.2001, while PWs 1 and 2, the Preventive Officers attached to the Karunagappally Excise Range along with other officers were on routine patrol duty, when they reached near Plavila junction and in front of the house of one Karuthakutty, they found a person coming along the road carrying a sack. Seeing the excise vehicle, he tried to turn round and escape. He was effectively intercepted and on questioning, he was unable to give satisfactory answers regarding the contents of the sack. The excise officials

opened the sack and examined the contents. They found that the can having a capacity of 35 litres containing some liquid. By taste and smell, they recognized it as spirit. For possessing contraband article, the accused was arrested and Ext.P1 is the arrest memo. The can having a capacity of 35 litres contained 20 litres of spirit. From the 20 litres, 200ml was taken as sample in a bottle having a capacity of 375 ml. The articles were fastened, sealed and labelled i.e., both the sample as well as the balance liquid and the can. The label so affixed on the sample bottle and on the balance liquid contained the signatures of the accused, the witnesses and PW1. He prepared Ext.P3 scene mahazar. MOs 1 to 3 were identified. PW5 received records and the accused and registered crime as per Ext.P4. He produced the articles and the accused on the same day itself before court. He produced sample before court and prepared a forwarding note as Ext.P6 for sending it for chemical examination. Investigation was conducted by PW6. He recorded

statement of witnesses and on getting Chemical Examination report namely, Ext.P8, he laid charge 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, Kollam under Section 209 of Cr.P.C. after following the necessary procedures. The said court made over the case to Additional Sessions Court, (Adhoc)-III, Kollam, 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 offence punishable under Section 55(a) 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 P8 marked. MOs 1 to 3 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 is innocent. He also stated that while he was standing by the side of a road, an Ambassador car approached him and he was pulled into the car and taken to the Excise Office. Thereafter, he was falsely implicated in the case.

7. 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. The court below considerably influenced by the evidence of PWs 1 and 2 and the contemporaneous document namely, Ext.P3 and also the production of the accused and the properties seized before court immediately thereafter, was convinced that the prosecution has succeeded in establishing the case against the accused and therefore found him guilty. Conviction and sentence as

already mentioned followed.

9. Assailing the conviction and sentence, the learned counsel appearing for the appellant contended that this appeal will have to succeed on a very short ground. Neither in Ext.P3 mahazar nor in the forwarding note produced before court namely, Ext.P6, the nature of the seal said to have been affixed by PW1 finds a place. The space in Ext.P6 for affixing the sample seal is left blank and that, according to the learned counsel, is fatal. Further, it is contended that PW5 was only an Assistant Excise Inspector, who, at the relevant time, was not authorized to deal with the case at all and his acts of receiving the accused, registering the crime, producing the accused before court etc., are without any authority and on that ground also, the prosecution has to fail. The learned counsel, for the purpose of emphasizing the consequences of non furnishing the sample seal, relied on the decision reported in **Mohanan v. State of Kerala** (2014 KHC 55).

10. The learned Public Prosecutor on the other hand contended that even though the mahazar Ext.P3 and Ext.P6 do not contain description of the seal that is alleged to have been affixed by PW1, PW1 in his evidence has stated about the nature of the seal affixed on the sample and that would be sufficient to meet the requirements of law. As far as the contention regarding the incompetency of PW5 is concerned, it is pointed out that he has neither conducted investigation nor detection of the case and therefore no infirmity is attached to any of the action done by him. The learned Public Prosecutor contended that the court below has analysed the evidence meticulously and has come to the conclusion that the prosecution has established the case beyond reasonable doubt and there is no reason as to why this Court should interfere in appeal.

11. PWs 1 and 2 are the two Preventive Officers who along with the team of officers had gone on routine patrol duty on the date of incident also. They speak about the

detection of the offence, the various acts done by PW1 and also the production of the articles, the accused and the records namely, Ext.P5 in court on the very same day itself. The versions of PWs 1 and 2 are consistent and uniform regarding the incident. Even though they were cross examined at length, nothing could be brought out from their evidence. Further, their testimony gets considerable support from the contemporaneous document namely, Ext.P3, the mahazar prepared by PW1 at the spot. It is also significant to notice that the articles, the accused and the documents were promptly produced before court.

12. Normally, the above facts would have been sufficient to come to the conclusion that the accused is guilty. But, certain technicalities do have a role to play in the facts and circumstances of the case. This Court had occasion to consider the consequences of non-mention of the nature of the seal affixed in the mahazar prepared at the spot and even in the forwarding note sent to the court

requesting the court to send the sample for chemical analysis. It is true that PW1 has stated the nature of the seal affixed by him in his deposition. But, in the absence of any such description in Ext.P3 mahazar and also the presence of the sample seal in Ext.P6 forwarding note, the testimony of PW1 cannot be accepted in law. This Court had occasion to consider the necessity to provide the sample seal in the space shown in the forwarding note. An elaborate discussion in this regard is unnecessary for the simple reason that these aspects have been considered in the decision reported in **Mohanan v. State of Kerala** (2014 KHC 55), wherein it was held as follows:

“12. It is also relevant to note that in Ext.P6 chemical analysis report, it is seen certified that, “The seal on the bottle was intact and found tallied with the sample seal provided”. I fail to understand on what materials and evidence, the chemical examiner issued such certificate. In Ext.P1 mahazar, which said to have prepared at the spot, there is no description about the seal

claimed to have affixed on the sample. No specimen seal impression is provided in Ext.P1 mahazar. So the available evidence, mainly Ext.P1 and the deposition of PWs 3 and 4, are absent about the seal allegedly affixed on the sample bottle. In the present case, no proper forwarding note or requisition filed before the Court to send the sample for chemical analysis. On a perusal on Ext.P5 requisition, which shows that there was a formal request to send the sample. But the details including the quantity of the sample and the description of the sample bottle etc. are absent. It is also relevant to note that no sample seal is provided in Ext.P5 requisition. Had the sample seal provided in Ext.P5 requisition and the same forwarded to the chemical examiner, they could have made a comparison and come into conclusion as to whether the seal affixed on the sample is tallying with the sample seal so provided. But in the present case, there is no evidence as to the seal affixed on the sample bottle, or the sample of the seal so affixed was forwarded to the chemical examiner. In the absence of such evidence, no evidentiary value can be attached to the certificate Ext.P6, issued by the chemical examiner. Therefore, the only conclusion that

can be arrived is that there is no legal evidence to show that what allegedly seized from the possession of the accused is illicit arrack.”

13. The principle laid down in the above decision applies with all force to the facts of the case and there is no reason as to why the same principle should not be applied to this case also.

For the above reasons, this appeal is allowed. The conviction and sentence passed by the court below are set aside and it is held that the prosecution has not succeeded in establishing the case against the accused. 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