

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

CRL.A.No. 554 of 2006 ()

**AGAINST THE JUDGMENT IN SC 33/2002 of ADDITIONAL SESSIONS COURT (ADHOC)-
II, KALPETTA DATED 24-02-2006**

APPELLANT(S)/ACCUSED.:

**SUDHAKARAN, S/O.VELAYUDHAN,
MELEVELLERY HOUSE, VADUVANCHAL VALAVU
CHILLANGODU P.O.**

BY ADV. SRI.GRASHIOUS KURIAKOSE (SR.)

RESPONDENT(S)/COMPLAINANT:

**STATE - S.I. OF POLICE, MEPPADY,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI. C.K. JAYAKUMAR

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 554 of 2006

Dated this the 18th day of September, 2015

J U D G M E N T

Accused was prosecuted for the offence punishable under Section 55(a) of the Abkari Act and was found guilty. He was convicted and sentenced to suffer simple imprisonment for a period of one year and to pay a fine of ₹1,00,000/- with a default clause of three months.

2. The prosecution case is that on 26.10.2000, at about 17.30 hrs., while PW4, an Assistant Sub Inspector of Police and his team were on patrol duty, they received reliable information that a person was vending in illicit liquor. They went to the place and after alighting from the vehicle, they walked towards the person concerned. The accused was seen standing by possessing a 5 litre can and a glass. On seeing the Police party, the accused threw away the can and the glass and took to his heels. Even though

they tried to apprehend him, they did not succeed. PW4 says that when they examined the place of occurrence, they could not find the glass which had thrown away by the accused. They examined the contents in the can and found it to be illicit liquor. PW4 says that he took two samples of 180ml each and had them sealed and labelled. Ext.P1 mahazar was prepared by him and then he returned to the station along with the contraband articles and registered crime as per Ext.P3 FIR. The property list prepared by him is marked as Ext.P4. Ext.P5 is the forwarding note and Ext.P6 is the Chemical Analysis report. Investigation was taken over by PW6, who verified the records and laid charge before court.

3. Cognizance of the offence was taken by the court concerned which found that the offence is exclusively triable by a Court of Sessions and committed the case to Sessions Court, Kalpetta. The said court made over the case to Additional Sessions Court-II, Kalpetta for trial and disposal.

4. The latter court, on receipt of records and appearance of the accused, framed charges for the offence punishable under Section 55(a) of the Abkari Act to which the accused pleaded not guilty and claimed to be tried. The prosecution therefore examined PWs 1 to 7 and had Exts. P1 to P6 marked. MO1 was got identified and marked.

5. After the close of prosecution evidence, the accused was questioned under Section 313 Cr.P.C., wherein, he denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent.

6. 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.

7. The court below, accepting the evidence of PWs 4 and 5, who claim to have detected the offence and also other contemporaneous documents, found the accused to be guilty. Conviction and sentence followed.

8. Assailing the said conviction and sentence, the learned counsel appearing for the appellant pointed out that this appeal will have to be succeeded on a very short ground. Admittedly, the detection and major portion of the investigation was done by the Assistant Sub Inspector of Police, who was not competent to act under the Abkari Act. Referring to the relevant G.O., it was pointed out that at the point of time, when the detection was made, only officers of the rank of Sub Inspector or above are competent to act as Abkari Officers. The learned counsel went on to point out that this Court had occasion to consider this aspect on various decisions and this Court held that when the act of detection and investigation was done by an incompetent Officer, the whole proceedings is vitiated and no steps can be initiated on such proceedings.

9. There seems to be considerable force in the above submission. Though the learned Public Prosecutor pointed out that at the relevant time PW4, the Assistant Sub

Inspector was the SHO, going by the definition of Abkari Officer in the Abkari Act and also the relevant notification, it is not the SHO who is authorized to conduct detection and investigation, but Officers of and above the rank of Sub Inspector are competent to act as Abkari Officers. If that be so, even if an Assistant Sub Inspector is in charge of the station or is the SHO, it does not cast any power on him to act under the Act. The authority if any required is furnished by the decision reported in **Narayanankutty v. State of Kerala** [2015 (2) KLT SN 18] and **Saji @ Kochumon v. State of Kerala** [2010 (3) KLT 471].

10. This Court had occasion to consider the act done by such incompetent officers and this Court in such circumstances held that the accused is entitled to an acquittal.

For the above reasons, this appeal is allowed. Conviction and sentence are set aside and the accused stands acquitted of 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