

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

CRL.A.NO. 556 OF 2006 ()

**AGAINST THE JUDGMENT IN SC 481/2001 OF ADDITIONAL DISTRICT & SESSIONS
COURT, FAST TRACK-I, THIRUVANANTHAPURAM**

APPELLANT(S)/ACCUSED:

**SANTHA, D/O.SARATHA,
MALU VEEDU, KATTAIKONAM, AYIROORPPARA VILLAGE.**

**BY ADVS.SRI.P.K.MUHAMMED
SRI.S.VIJI**

RESPONDENT(S)/STATE & COMPLAINANT:

- 1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**
- 2. EXCISE INSPECTOR,
KAZHAKKOOTTAM EXCISE RANGE
THIRUVANANTHAPURAM DISTRICT.**

BY PUBLIC PROSECUTOR SRI. C.K. JAYAKUMAR

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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P.BHAVADASAN, J.

Crl.A. No. 556 of 2006

Dated this the 09th day of October, 2015

J U D G M E N T

The accused was prosecuted for the offence punishable under Section 55(a) of the Abkari Act. She was found guilty. Therefore, she was convicted and sentenced to suffer rigorous imprisonment for six months and to pay a fine of ₹1 lakh with a default clause of six months.

2. The incident is said to have taken place on 31.12.1998 at 12.45 p.m.. PW1 and the other officers, who were on patrol duty, happened to see the accused going along the road carrying a can with him. Seeing the excise officials, the accused panicked and tried to run away. Feeling suspicious, she was intercepted and the can was seized. On examination of the contents, it turned out to be arrack. The accused was arrested and mahazar was prepared which is marked as Ext.P1. Ext.P2 is the arrest memo. Thereafter, the officers returned to the Police Station

and PW1 entrusted the records and the accused to the Excise Inspector, Kazhakuttom Excise Range. PW3 took over investigation and recorded statements of witnesses. He obtained Ext.P4 chemical analysis report and 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, Thiruvananthapuram under Section 209 of Cr.P.C. after following the necessary procedure. The said court made over the case to Additional District and Sessions Court, Fast Track-I, Thiruvananthapuram, 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 3 examined and had Exts.P1 to P5 marked. MO1 was got identified and marked.

6. After the close of prosecution evidence, the accused was questioned under Section 313 Cr.P.C. She denied all the incriminating circumstances brought out in evidence against her and maintained that she was innocent.

7. Finding that the accused could not be acquitted under Section 232 Cr.P.C., she was asked to enter on her defence. She chose to adduce no evidence.

8. Finding that the evidence of PWs 1 and 2 taken along with Ext.P1 and also the prompt production of the accused and the articles before court, the court below came to the conclusion that the prosecution version is acceptable and prosecution has established the case beyond reasonable doubt. On the basis of the above evidence, the court below held the accused guilty and the Conviction and sentence as

already mentioned followed.

9. Assailing the conviction and sentence, the learned counsel for the appellant pointed out that it is very strange to note that even though the prosecution has a case that the two independent witnesses, who had witnessed the seizure and sampling, were not even cited as witness by the prosecution let alone examine them. The case solely rests upon the evidence of PWs 1 and 2, who are excise officials and their evidence is not corroborated from independent sources. The learned counsel further pointed out that no property list or forwarding note is seen produced before the court below. These infirmities were conveniently overlooked by the court below and that has resulted in miscarriage of justice.

10. The learned Public Prosecutor contended that the evidence of PWs 1 and 2, who are official witnesses, is sufficient to come to the conclusion the accused had committed the offence. Nothing could be brought out in

their cross examination which would show that they are not speaking the truth. Coupled with Ext.P1 mahazar, which is prepared on the spot containing all the details, the offence is established. There is no reason to interfere with the finding of the court below.

11. As rightly pointed out by the learned counsel for the appellant, the prosecution case solely rests on the testimony of PWs 1 and 2. No doubt, they give uniform version of the incident. There is not much contradiction and inconsistency in their evidence.

12. The learned counsel for the appellant may be justified to some extent in raising the complaint that in the final report filed before court, independent witnesses, according to the prosecution, had occasion to witness the seizure were not even cited. Apart from the above fact, it is surprising to note that neither property list nor forwarding note is seen produced or marked in the case. It is therefore not possible to understand as to what exactly the properties

produced before court. The significance of the forwarding note is that it should contain the sample seal. The chemical examiner could verify with the seal forwarded along with the sample. This lacuna in not producing the forwarding note enures to the benefit of the accused. Then alone it can be concluded that the seal affixed in the forwarding note sent to chemical examination tallies with the seal found on sample.

For the above reasons, this court is unable to accept the finding of the court below that the accused is guilty. This appeal is allowed. The conviction and sentence passed by the court below are set aside. The accused stands acquitted of all charges levelled against her. Her bail bond shall stand cancelled and she is set at liberty.

Sd/-
P.BHAVADASAN
JUDGE

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P.A. to Judge