

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

CRL.A.No. 567 of 2006 ()

**AGAINST THE JUDGMENT IN SC 129/2004 of ADDITIONAL SESSIONS COURT
(ADHOC-I), THODUPUZHA DATED 23-02-2006**

CP 79/2001 OF JUDICIAL FIRST CLASS MAGISTRATE, NEDUMKANDOM

APPELLANT(S)/ACCUSED:

**JAMES, S/O.JOSEPH,
MUTTATHETTU VEEDU, 8TH MILE KARA, ANAKKARA VILLAGE.**

BY ADV. SRI.P.CHANDY JOSEPH

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA AT ERNAKULAM**

BY PUBLIC PROSECUTOR SMT. S. HYMA

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 567 of 2006

Dated this the 13th day of November, 2015

J U D G M E N T

The accused was prosecuted for the offences punishable under Sections 55(a) and 8(1) & (2) of the Abkari Act. He was found guilty. He was therefore convicted and sentenced to undergo rigorous imprisonment for six months and to pay a fine of ₹1 lakh with a default clause of simple imprisonment for a period of three months.

2. The incident which gave rise to this case occurred on 28.10.2000. On that day, PW3, the S.I. of Police attached to Vandanmedu Police Station by about 8.00 p.m., along with PW4 and others, went on routine patrol duty. On the way, they received reliable information that at a particular place, the accused is vending in illicit liquor. When they reached the place, it is alleged by the prosecution that the accused standing in front of a shop tried to escape. He was intercepted and on search of his body yielded four bottles

with 180ml of arrack in each of the bottle. The accused was arrested and Ext.P1 mahazar was prepared. *suo motu* report prepared by PW3 is marked as Ext.P2(a). He returned to the Police Station and registered crime as per Ext.P2 FIR. He claims to have prepared a property list and produced the property before court on 14.11.2000. He obtained the Chemical Analysis Report namely, Ext.P5. Further investigation was done by PW5. He verified the records, took statements of witnesses, completed investigation 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, Thodupuzha under Section 209 of Cr.P.C. after following the necessary procedures. The said court made over the case to Additional Sessions Court, (Adhoc-1), Thodupuzha 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 offences punishable under Sections 55(a) and 8(1) & (2) 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 5 examined and had Exts.P1 to P5 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 is innocent. He further submitted that after he had returned attending a funeral ceremony and had engaged in casual labour work, the Excise Officials arrived at the place and asking who the person by name James was, he was put in the vehicle and was taken to the Station and false case has been foisted against him.

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. The learned Judge must have found the evidence of PWs 3 and 4 to be convincing enough supported by the mahazar alleged to have been prepared by PW3 to come to the conclusion that the offence has been made out. Conviction and sentence followed.

9. Assailing the conviction and sentence, the learned counsel appearing for the appellant pointed out that the court below has not taken note of the fact that there was considerable delay in producing the seized articles before court. The incident was on 28.10.2000 and the articles were produced only on 14.11.2000. There is no satisfactory explanation offered by the prosecution for this unusual delay. It is not discernible from the records, according to the learned counsel, as to who was in custody of these articles during the relevant period. According to the learned

counsel, the reason given for delay by PW4 can be taken only with a pinch of salt and cannot be accepted as a reasonable cause for the delay. For the above proposition the learned counsel relied on the decision reported in **Ramankutty v. Excise Inspector, Chelannur Range** (2013 (3) KHC 308) and contended that the principle laid down in the above decision applies with all force to the facts of the present case and the accused is entitled to an acquittal.

10. The learned Public Prosecutor on the other hand contended that the evidence of PWs 3 and 4 are sufficient to show that contraband article was in fact seized from the possession of the accused. The contemporaneous document prepared by PW4 supports the prosecution version. It is also contended that Chemical Analysis Report further strengthens the prosecution case. The learned Public Prosecutor contended that PW4 has given convincing reason as to how the delay had occurred and there is no

justification for disbelieving him. In short, the contention is that no grounds are made out to interfere with the conviction passed by the court below.

11. It is true that the evidence of detection, sealing etc are furnished by PWs 3 and 4, among whom, PW4 was the Senior Officer. Their version regarding the incident is consistent and uniform. Even though they were subjected to severe cross examination, no statement which would discredit them could be brought out from their evidence. Therefore, as rightly pointed out by the learned Public Prosecutor, the seizure of the contraband article is proved.

12. But that is not the end of the matter. The question arises as to when the article was produced before court. Admittedly, the detection in this case was on 28.10.2000. The articles were produced only on 14.11.2000. All that PW4 says that he wanted to directly produce the articles before court and that is how the delay had occurred.

13. It is difficult to accept the explanation offered by PW4. It need not have taken 14 days for PW4 to directly produce the contraband articles before court or at least he/she could have deputed someone to produce it before court. Having not taken any such course, the prosecution cannot simply get away by saying that PW4 wanted to deliver the articles directly to the court and therefore the delay had occurred.

14. It will not be out of place here to notice that the arrest memo is also not produced in the present case. When these facts are viewed in the light of the decisions reported in **Ramankutty v. Excise Inspector, Chelannur Range** (2013 (3) KHC 308), it is clear that the delay should prove fatal to the prosecution. The reason offered by PW4 for the delay is certainly not acceptable. If there is delay in producing the articles before court, tampering cannot be ruled out. At any rate, a reasonable doubt is created in which case the accused is entitled to be acquitted.

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

ds

//True copy//

P.A. to Judge