

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

CRL.A.No. 625 of 2006

AGAINST THE JUDGMENT IN SC 512/2004 of ADDITIONAL SESSIONS
COURT – FAST TRACK-I, PALAKKAD.

APPELLANT(S)/ACCUSED:

SUNIL KUMAR, S/O.KRISHNAN,
AMBEDKAR COLONY, AZHIYANNUR DESOM,
KADAMPAZHIPPURAM IIND VILLAGE.

BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

RESPONDENT(S)/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM,
REPRESENTING THE EXCISE RANGE OFFICE, CHERPULASSERY.

BY PUBLIC PROSECUTOR SMT. S. HYMA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 625 of 2006

Dated this the 2nd day of November, 2015.

JUDGMENT

The accused were prosecuted for the offence punishable under Section 55(a) of the Abkari Act. He was found guilty. He was therefore convicted and sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.1,00,000/- with a default sentence to undergo rigorous imprisonment for three months.

2. The incident in this case occurred on 10.6.1998. On that day P.W.1, who was the Excise Inspector attached to Cheruplassery Excise Range in the morning along with other officers were on routine patrol duty. When they reached Ambedkar Colony road by about 8.45 a.m. they happened to see the accused coming along with a can. He was intercepted and the can was seized and contents were examined. It was found to contain 2 litres of arrack. 180 ml was taken as

sample and the can containing contraband article was sealed and labelled and the label contained the signature of the accused and P.W.1. He prepared Ext.P1 mahazar. Ext.P2 is the arrest memo. He returned to the office with the accused, the article and the records. Ext.P3 is the occurrence report. The articles were produced before the court on the very same day. He prepared Ext.P4 forwarding note and sent to court and the chemical analysis report received is Ext.P5. P.W.4 took over investigation and prepared Ext.P6 scene mahazar. He recorded statements of witnesses, completed investigation and laid charge before court.

3. The court, before which final report was laid took cognizance of the offence. Finding that the offence is exclusively triable by a court of Sessions, the said court committed the case to Sessions Court, Palakkad. The said court made over the case to Additional Sessions Court Fast Track -I, Palakkad for trial and disposal.

4. The latter court, on receipt of records and on appearance of the accused framed charge for the offence punishable under Section 55(a) of the Abkari Act. To the charge, the accused pleaded not guilty and claimed to be tried. The prosecution therefore examined P.Ws. 1 to 4 and had Exts.P1 to P6 marked. M.O. 1 was got identified and marked. After the close of the 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. 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.

5. The court below mainly based on the evidence of P.Ws. 1 and 2 and the contemporaneous document found that the offence has been made out and accordingly conviction and sentence as already mentioned followed.

6. Learned counsel assailing the conviction pointed out that the court below has omitted to note that certain vital aspects and that is fatal to the prosecution case. It is also pointed out that Section 55(a) of the Abkari Act is not attracted to the facts of the case and there also the court below has erred in law. According to the learned counsel, the sentence imposed is on the high side considering the quantity of contraband article seized.

7. Learned Public Prosecutor submits that the evidence of P.Ws. 1 and 2 are sufficient to come to the conclusion that the offence has been made out. True, there are minor inconsistencies and contradictions in the evidence and that has no impact on the strength of the case against the accused. Any ambiguity in their evidence is cured by the contemporaneous document Ext.P1 prepared by P.W.1 at the spot. It is also pointed out by the learned Public Prosecutor that prompt production of the documents, the articles seized

and the documents before the court make prosecution case stronger. At any rate, the court below has chosen to accept the version of P.Ws. 1 and 2 and there is no reason as to why this Court should take a different view.

8. After having gone through the evidence of P.Ws. 1 and 2 and also the contemporaneous document Ext.P1, there seems to be considerable force in the submission made by the learned Public Prosecutor. True, there are certain minor inconsistencies and contradictions in the evidence of P.Ws. 1 and 2. But one should notice that the witnesses were giving evidence after a lapse of several years and it is imprudent on the part of the court to expect photographic memory from the witnesses. With regard to seizure, sampling etc., there is absolutely no contradiction in the evidence given by P.Ws. 1 and 2.

9. As rightly pointed out by the learned Public Prosecutor any doubt regarding the evidence of P.Ws. 1 and 2

is set at rest by the contents of Ext.P1 mahazar drawn up by P.W.1. Further, as rightly pointed out by the learned Public Prosecutor, production of the accused, documents and the seized articles on the very same day itself before court further fortifies the case of the prosecution and rules out any fabrication or manipulation of the case. It was the above facts which persuaded the court to come to the conclusion that the offence has been made out. There is nothing to indicate that the court below has not taken note of the relevant facts and taken into consideration irrelevant facts. Once the view taken is justified, no interference is called for.

10. However, offence under Section 55(a) cannot be attracted to the facts of the case since it is not shown that the possession of the contraband article is for export or import and only Section 8(1) can be attracted to the facts of the case.

11. Faced with the above situation, learned counsel for the appellant prays that some leniency may be shown with

regard to the sentence. Considering the age of the accused and considering the fact that there is no antecedents of the accused engaged in such activities, he should be given an opportunity to reform himself and passage of time should also be taken not of by this Court.

12. After having heard learned counsel for the appellant and the learned Public Prosecutor, and considering the various aspects, it is felt that the sentence imposed is disproportionate to the offence committed by the accused. His age also should be taken into consideration, so also the passage of time and the fact that there is no antecedent history as far as the accused is concerned.

In the result, while confirming the conviction of the accused for the offence under Section 8(1) instead of Section 55(a) of the Abkari Act, the sentence imposed by the court is set aside and the accused is sentenced to undergo rigorous imprisonment for three months and to pay fine of

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Rs.1,00,000/–, in default to undergo simple imprisonment for a period of one month. Set off as per law will be allowed.

P. BHAVADASAN,
JUDGE

sb.