

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

CRL.A.No. 831 of 2004 ()

SC 324/2001 of ADDL.DISTRICT COURT (ADHOC-I), KASARAGOD

APPELLANT(S)/ACCUSED::

PARAMMAL KUNHIRAMAN, S/O. KOTTAN,
CHULLY, MALOM VILLAGE.

BY ADVS.SRI.M.THAMBAN SMT.T.SUDHAMANI

RESPONDENT(S)/STATE::

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

BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04-11-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SKV

K.RAMAKRISHNAN, J.

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Crl. Appeal No.831 OF 2004

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Dated this the 4th day of November, 2015

JUDGMENT

Accused in SC 324/2001 on the file of the Additional Sessions Court (Adhoc-I) Kasaragod is the appellant herein. The appellant was charge sheeted by the Sub Inspector of Police Vellarikkundu Police Station in Crime No.16/2000 under Section 55(a) of the Abkari Act (ought to be under Section 8(1) of the Abkari Act).

2. The case of the prosecution in nutshell was that on 3.2.2000, at about 12 noon, the accused was found to be in possession of 23 litres of arrack made in Karnataka in 230 packets of 100 ml kept in a plastic sack in a cow shed situated 15 metres to the south of his residential house with No.BP VI/40 of Chulli in Maloom Village in violation of the provisions of the Abkari Act and thereby he had committed the offence punishable under Section 55(a) of the Abkari Act (ought to be under Section 8(1) read with Section 8(2) of the Abkari Act).

3. After investigation, final report was filed before

the Judicial First Class Magistrate Court-I Hosdurg, where it was taken on file as CP 12/2001. After complying with the formalities, the case was committed to the Sessions Court, Kasaragod by the learned Magistrate under Section 209 of the Code of Criminal Procedure (hereinafter referred to as the Code). After committal, the case was taken on file as SC 324/2001 by the Sessions Judge, Kasaragod and thereafter it was originally made over to the Assistant Sessions Court, Hosdurg for disposal. Thereafter it was withdrawn by the Sessions Judge and made over to Additional Sessions Court (Adhoc-I), Kasaragod for disposal.

4. When the accused appeared before the court below, after hearing both sides, charge under Section 55 (a) of the Abkari Act was framed and the same was read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution PWs1 to 7 were examined and Exts.P1 to P7 and MOs1 to 3 were marked on their side. After closure of the prosecution evidence, the accused was questioned under Section 313 of the

Code, and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that no article was seized from his possession and he has been falsely implicated in the case. Since the evidence in this case did not warrant an acquittal under Section 232 of the Code, the accused was called upon to enter on his defence. But no defence evidence was adduced on his side. After considering the evidence on record, the court below found the appellant guilty under Section 55(a) of the Abkari Act and convicted him thereunder and sentenced him to undergo rigorous imprisonment for 2 years and also to pay a fine of Rs.1,00,000/- in default to undergo rigorous imprisonment for 6 months more. Set off was allowed for the period of detention already undergone by him. Aggrieved by the same, the above appeal has been preferred by the appellant/accused before the court below.

5. Though the appeal was filed by Late M. Thampan, after his death Smt. Neethu Prem entered

appearance for the appellants. Heard Smt. Neethu Prem counsel for the appellant and Shri. Jibu P. Thomas learned Public Prosecutor appearing for the State.

6. The counsel for the appellant submitted that there is no evidence adduced on the side of the prosecution to prove that the accused was in possession of the property or the house compound in which the shed was situated from where the alleged contraband articles were seized. No document has been produced on the side of the prosecution to prove that he was residing there along with his mother as claimed by the prosecution. The prosecution relies on the statement said to have been made by the mother of the accused that he was residing in the house for the purpose of connecting the accused with the house and this was relied on by the court below. But the mother of the accused was not examined to prove this fact as well. So under the circumstances, court below was not justified in convicting the appellant for the offence alleged and she prayed for acquittal of the accused.

7. On the other hand, the learned Public Prosecutor submitted that the evidence adduced on the side of the prosecution proved that he was residing along with his mother who is the owner of the house and the property and he was in conscious possession of the articles seized and conviction does not call for any interference.

8. The case of the prosecution as emerged from the prosecution witnesses was as follows:-

On 3.2.3000, at about 11.30 am, while PW5 the Circle Inspector of Police Vellarikund was in his office, he got information that the accused had stored arrack in a shed in his property and immediately he went to Vellarikund Police Station and took PW6 and also some police officials and went to the property, on examination he found MO2 sack kept in between some wooden blanks and on verification, he found 230 plastic packets of 100 ml. containing some liquid. He opened six such packets and verified the contents of the same by smelling and tasting and he was satisfied that it was arrack. He

took the liquid found in MO3 series opened packets in two 375 ml bottles of 300 ml each and sealed and labelled the same containing the signatures of witnesses and himself and he put MOI series in remaining 224 packets in MO2 sack itself and sealed the same and labelled the same also in the same fashion and seized the same as per Ext.P1 mahazar in the presence of PW1 and another. Thereafter he came to Police Station and registered Ext.P5 First Information Report as Crime No.16/2000 of Vellarikund Police Station against the accused under Section 55(a) of the Abkari Act and entrusted the articles with a writer with an instruction to produce the same before the court and entrusted PW6 Sub Inspector of Police Station to conduct the investigation. Thereafter the investigation was undertaken by PW6, he went to the place of occurrence and prepared Ext.P2 scene mahazar in the presence of PW2 and another. On the basis of his request PW3, the Village Officer issued Ext.P3 possession certificate of the property stating that the property is in the possession of Chirutha, mother of Kunjikannan. On

the basis of the request given by him PW4, the Secretary of Balal Grama Panchayath issued Ext.P4 ownership certificate stating that the House with No.6/174, old VI/40 of Balal Grama Panchayath is in the possession of Parammal Chirutha. He produced the articles before court along with property list. He sent Ext.P6 forwarding note with a request to send the samples for analysis and the sample was sent from court and Ext.P7 chemical analysis report obtained, which shows that the samples contained 29.72% by volume of ethyl alcohol. Further investigation in this case was continued by his successor PW7 who verified the investigation, completed the investigation and submitted final report.

9. PW1 is the witness to the alleged seizure. He had denied having seen the seizure. But he admitted his signature in Ext.P1 mahazar. He had denied having any acquaintance with the accused as well. According to him he signed Ext.P1 from the Police Station as requested by the Police. So his evidence is not helpful to prove the seizure or any connection of the contraband articles with

the accused. PW2 is the attestor to scene mahazar. His evidence is not helpful to prove the alleged seizure.

10. Then the evidence is only that of PW4, the detecting officer alone. According to him on 3.2.2000, at about 11.30 am while was in his office, he got information that arrack was stored in a shed in the house property of the accused and immediately he went to that place with the police party and on examination of the cow shed situated in the property, he found MO2 plastic sack kept in between the wooden blanks and on verification of the sack he found that it contained 230 plastic packets of liquid of 100 ml and he opened six such packets which were identified as MO3 series and examined the contents and satisfied that it was arrack and it was seen from the label on the packets that it was manufactured at Karnataka. Thereafter, he took the liquid in MO3 series packets in two 375 ml bottles of 300 ml each and sealed the same and labelled the same with the signature of himself and witnesses. He put MOI series remaining 224 packets in MO2 sack itself and sealed and labelled the

same in the same fashion and seized the same as per Ext.P1 mahazar. Thereafter he came to police station and registered the crime.

11. He had admitted in his evidence that accused was not there in the house at that time and he had also admitted that he did not verify any documents to show that accused has got any connection with the house. He had also admitted that he had not verified the ration card as well. He had also admitted that he had not taken any steps to arrest the accused as well. So from his evidence, it cannot be said that the accused has got any connection with the house or the property from where the contraband articles were seized. Then the evidence is that of PWs3 and 4 and Exts.P3 and P4 and the evidence of PWs 5, 6 and 7. Ext.P3 coupled with the evidence of PW3 will only go to show that the properties are in the possession of Chirutha who is said to be the mother of one Kunjiraman. There is nothing to show that the accused has got any control or domain over the property. Ext.P4 ownership certificate coupled with the evidence of PW4 the secretary

of the Grama Panchayath will go to show that the house situated in the property is in the name of one Palammal Chirutha. It also does not show that the accused was occupying the house or he has got any domain or control of the house as well. Even PWs 6 and 7 have deposed that they have not verified any document to show that the accused was residing in the house, so as to connect him with the contraband articles seized.

12. But in paragraph 10 of the judgment, court below only relied on the submission made by the Public Prosecutor to the effect that when Chirutha herself was questioned, she had admitted that she is residing in the said house along with her son and his wife Leela. Except the statement made by the Public Prosecutor before court, there is no other material before the court to show that the accused Kunjiraman was residing in that house. Chirutha who is said to be the mother of the accused said to have been questioned by the investigation officer was not examined before the court to prove the statement said to have been given by her to the effect that the

accused was residing in the house along with her and his wife so as to connect him with the contraband articles alleged to have been seized from the cow shed situated in the property. So under the circumstances, court below was not justified in relying on the inadmissible evidence which is not even proved by examining the witnesses who had said to have given such statement, to come to the conclusion that the prosecution has proved that the accused was found to be in possession of contraband articles alleged to have been seized from the cow shed in that property and consequential conviction entered by the court below against the appellant for the offence under Section 55(a) of the Abkari Act is unsustainable in law and the same is liable to be set aside and the appellant is entitled to get acquittal of the charge levelled against him giving him the benefit of doubt.

13. In view of my finding that the appellant is entitled to get acquittal, the sentence imposed is also not proper and the same is also set aside.

In the result the appellant succeeds and the appeal

is allowed and the order of conviction and sentence passed by the court below against the appellant under Section 55(a) of the Abkari Act are hereby set aside. The appellant is acquitted of the charge levelled against him giving him the benefit of doubt. He is set at liberty. The bail bond executed by him will stand cancelled. The fine amount if any remitted by the appellant before the trial court is directed to be refunded to him on making necessary application for that purpose.

Office is directed to communicate this judgment to the concerned court immediately.

Sd/-

K.RAMAKRISHNAN, JUDGE

SKV