

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

CRL.A.No.663 of 2006

AGAINST THE JUDGMENT IN SC 227/2004 of ADDITIONAL SESSIONS COURT
FAST TRACK No.1 (ADHOC), MANJERI DATED 27.02.2006

APPELLANT/ACCUSED/REVISION PETITIONER:

A.P. SURESH, S/O.AMBALAPPARAMBIL CHERIYA
PERUMAL, MELATUR AMSOM, DESOM
PERINTALMANNA TALUK.

BY ADV. SRI.C.M.KAMMAPPU

RESPONDENT/STATE/COMPLAINANT:

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

BY SMT.S. HYMA, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.663 OF 2006

Dated this the 26th day of October, 2015.

J U D G M E N T

The accused was prosecuted for the offences punishable under Sections 55(g) and 55(i) of Abkari Act. After trial, he was found guilty and was therefore convicted and sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.1 lakh with default clause of simple imprisonment for six months. Set off as per law was allowed.

2. On 30.09.1999, while PW3 was functioning as Excise Inspector and PW4 as Preventive Officer, they went for patrol duty as usual and when they reached a place called Melatur, they received reliable information that the accused is possessing materials for distillation of arrack in his house. PW3 sent a search memo to the court and along with the independent witnesses they reached the house of the accused. At the relevant time, the accused was at home. His house was searched. In the north eastern corner of the kitchen, they found a mud illichatti

having a capacity of 10 liters and an aluminum vessel having a capacity of 25 liters. When the lid was opened, the aluminum vessel was seen to contain a liquid. By taste and smell, the liquid was identified as wash. He was arrested as per Ext.P2 arrest memo and Ext.P3 search list was prepared. Thereafter PW3 took 500ml of wash as sample in a bottle having a capacity of 750ml and sealed and labeled the same. He had also taken sample in a bottle having a capacity of 375 ml and that was also sealed. In both the samples, labels containing the signature of accused and the witnesses were affixed. He thereafter prepared Ext.P4 mahazar. After taking samples, the rest of the contraband articles was destroyed at the place itself. Ext.P5 is the arrest notice prepared by PW3. They returned to the office and registered a case as per Ext.P6 occurrence report. After preparing the property list, Ext.P7 and forwarding note, Ext.P8, the accused, articles and records were produced before court.

3. Investigation was taken over by PW5. He recorded statement of witnesses and had the chemical analysis report obtained as per Ext.P10. He also obtained ownership certificate

in respect of the house from where the article was seized and that is Ext.P1. He completed the investigation and laid charge before court.

4. The court before which charge was laid took cognizance of the offence and finding that the offence is exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Manjeri under Section 209 Cr.P.C. The said court made over the case to Additional Sessions Court Fast Track-1 (Ad hoc), Manjeri for trial and disposal. The latter court, on receipt of records and on appearance of the accused, framed charge for the offences punishable under Sections 55(g) and 55(i) of Abkari Act. To the charge, accused pleaded not guilty and claimed to be tried.

5. The prosecution therefore had PWs 1 to 5 examined and Exts.P1 to P11 marked. M.O.s I to III were got identified and marked.

6. After the close of the prosecution evidence, 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 added that he was a

Driver by profession and Excise Officials had summoned his lorry for bringing certain articles from the top of a hill. He could not accede to the request. As a retaliatory measure, he was falsely implicated in the case.

7. 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.

8. The court below found the evidence of PWs 3 and 4 taken along with the contemporaneous document namely, Ext.P4 to be convincing enough and held that the offence has been established. Conviction and sentence followed.

9. Assailing the conviction and sentence, learned counsel appearing for the appellant contended that the main contention is regarding possession and ownership of the house from where the article was seized. There is nothing to show, according to the learned counsel, that the accused was the owner of the property or that he was in exclusive possession of the same. Unless and until either of this is proved, the prosecution cannot succeed. Merely because an ownership certificate is obtained, that is not

sufficient in law. This aspect has been lost sight of by the court below and as a result a wrong judgment is being passed. Finally it is contended that considering the nature of offence committed, sentence imposed is on the higher side and is not proportionate to the offence.

10. Learned Public Prosecutor, on the other hand, contended that the evidence of PWs 3 and 4 are sufficient to establish the case beyond reasonable doubt and even though independent witness turned hostile, there is no reason to disbelieve the official witnesses. Their version gets support from the contemporaneous document namely, Ext.P4 mahazar and it is significant to notice that the articles and accused were promptly produced before court. A certificate has been obtained from PW1 to show the ownership of the house. Learned Public Prosecutor pointed out that at the time when the Excise Officials reached the house of the accused, accused was present at the house and it was in his presence that the search and seizure was made. There was no suggestion to PW3 or PW4 that the accused was nowhere in the house and that he has been falsely implicated. Learned

Public Prosecutor contended that there was no justifiable reason to interfere with the conviction and sentence.

11. The detection and preparation of various documents are confined to the testimony of PWs 3 and 4. Among them, PW3 is the detecting officer and PW4 had accompanied him along with other officers. Both of them say that when they reached a place called Melatur, they came to know about the activities of the accused and after preparing search memo, they went to his house. They gave uniform versions regarding the case that the accused was present there and he had lead them to the kitchen from where the contraband article was seized. Both of them say about the sampling done by PW3 and also about the two samples taken by him. Their evidence is consistent that they returned to the office and PW3 registered a crime against the accused. All other formalities have been complied with. Even though PWs 3 and 4 were cross examined at length, nothing is brought out in their evidence to show that they had any intention to falsely implicate the accused.

12. There is no rule of law that the evidence of the official witnesses shall not be relied on or that corroboration is absolutely necessary to accept their testimony. Corroboration is a rule of prudence and not a rule of law. There is no reason to disbelieve PWs 3 and 4 in this regard. Even though at the time of questioning under Section 313 Cr.P.C the accused had stated that he had declined to let his lorry for hire for transporting materials, there is no such suggestion to PW3 or PW4. It is clear that such a statement made at the time of questioning under Section 313 Cr.P.C is a result of an afterthought.

13. True, the independent witness turned hostile to the prosecution and denied having seen search and seizure. He, however, admits his signature on Ext.P4. Ext.P4 mahazar contains the details of all what was done in the place of occurrence and that sufficiently corroborates the evidence of PWs 3 and 4. There is no reason to disbelieve PWs 3 and 4 and there is no suggestion that they had falsely implicated the accused.

14. The court below has analysed the evidence in

considerable detail and has come to the conclusion that the offence has been made out. No interference is called for in the matter of conviction.

15. Faced with the above situation, learned counsel appearing for the appellant contended that considering the quantity of the contraband article seized, it is only proper that leniency is shown with regard to sentence.

16. After having heard the learned counsel appearing for the appellant, learned Public Prosecutor and also after having evaluated the facts and circumstances of the case, there seems to be some force in the submission made by the learned counsel for the appellant. The accused is alleged to have engaged in distillation of arrack and that is why he was apprehended. This is not to view the offence lightly but only to show that the sentence awarded is not proportionate to the offence committed.

Thus, while confirming the conviction of the accused for the offences under Sections 55(g) and 55(i) of Abkari Act, the sentence awarded is set aside and instead the accused is sentenced to suffer simple imprisonment for three months and to

pay a fine of Rs.1 lakh with default clause of simple imprisonment for one month. Set off as per law is allowed.

With the above modification, this appeal is disposed of.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.