

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

CRL.A.No.664 of 2006 (F)

AGAINST THE JUDGMENT IN SC 294/2004 of ADDITIONAL SESSIONS COURT
FAST TRACK - 1 (ADHOC), MANJERI DATED 04-03-2006

APPELLANT/ACCUSED:

RAMAN, S/O. CHAKKARAKADAN,
KUNNUCHENNAN RAVI, EDAKKARA AMSOM, MOOTHEDAM,
NILAMBUR.

BY ADV. SRI.K.P.MUJEEB

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY SRI. C.K. JAYAKUMAR, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.664 OF 2006

Dated this the 28th day of September, 2015.

J U D G M E N T

Accused was prosecuted for the offence punishable under Section 8(1) of Abkari Act. He was found guilty. He was therefore convicted and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.1 lakh with default clause of simple imprisonment for one year. Set off as per law was allowed.

2. The prosecution case in brief is that on 15.08.2002, while PW1, PW2 and other officers of Excise Department were on routine patrol duty, at about 3 p.m, when they reached before the house of a person by name Thambi, they saw a person coming along the road carrying a can. Seeing the excise officials, accused tried to retreat. He was intercepted and in the presence of witnesses the can was examined. The can had a capacity of 5 liters in which 2 liters of arrack was found. By taste and smell, they realised that the accused was carrying arrack. They also

found a glass in the possession of the accused. PW1 took a sample from the contraband article and sealed both the sample as well as the balance quantity. On both of them he had the labels containing the signature of the accused, his and the witnesses affixed. PW1 prepared Ext.P2 mahazar. PW1 then returned to the office and thereafter prepared the occurrence report as per Ext.P4. He prepared Ext.P5 property list and also Ext.P6 forwarding note. He produced the accused before court on the very next day.

3. Investigation was done by PW5. He recorded the statement of witnesses, obtained Ext.P8 chemical analysis report, completed investigation and laid charge before court.

4. The court before which final report 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 offence punishable under Section 8(1) 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 P9 marked. M.Os I and II 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. 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.

7. On appreciation of the evidence in the case, court below came to the conclusion that the prosecution has established the case against the accused and convicted and sentenced the accused as already mentioned.

8. The main grievance voiced in this appeal is that the court below ought not to have accepted the evidence of PWs 1 and 2 alone to find the accused guilty without independent

corroborative evidence. Both the independent witnesses have turned hostile to the prosecution and that weakens the prosecution case. It is further contended that no such incident as alleged by the prosecution has taken place and the accused has been falsely implicated. Finally it is contended that the sentence imposed is too harsh and is not justified by the offence alleged to have been committed by the accused.

9. Learned Public Prosecutor, on the other hand, contended that the evidence of PWs 1 and 2 stand scrutiny and there is no reason to disbelieve their version. Two independent witnesses, according to the learned Public Prosecutor, have admitted their signatures in Ext.P2 mahazar and that being a contemporaneous document goes a long way in supporting the evidence furnished by PWs 1 and 2. There is no suggestion or complaint that either PW1 or PW2 has an axe to grind against the accused and that he has been falsely implicated. In the absence of any serious infirmities, it will be imprudent on the part of the court to interfere with the findings of the court below.

10. Learned Public Prosecutor is fully justified in his

submission. PWs 1 and 2 give evidence regarding the incident. PW1 says that on 15.08.2002 at 3 p.m while he was working as Excise Inspector, Nilambur and while he was on patrol duty, he happened to see the accused coming along the road with a can in his hand. When the accused became nervous on seeing the excise officials, they felt suspicious and the person was intercepted and the can in his possession was seized and the contents were examined. It was seen to contain illicit arrack. Ext.P2 mahazar was prepared and thereafter PW1 says that he returned to the office and draw up Ext.P4 occurrence report. In no less terms he affirms that he prepared Ext.P5 property list and Ext.P6 forwarding note. He produced the accused and the article before court.

11. As already noticed, PW2 gives almost a same version of the incident. There is no contradiction or inconsistency in the evidence of PWs 1 and 2 regarding detection of offence even though there is minor discrepancy in their evidence. It is true that independent witnesses have turned hostile and they have not supported the prosecution case. But, as rightly pointed out

by the learned Public Prosecutor, they admitted their signature in the mahazar though for different circumstance and at different place. It is difficult to believe PWs 3 and 4 when they stated that they signed elsewhere and when their signatures are admitted in the documents. Any further corroboration if required is furnished by Ext.P2, a contemporaneous document prepared by PW1 which contains all the essential details. PW1 speaks about the seizure, sampling, sealing and labeling of the articles. Even though PWs 1 and 2 were cross examined at length, no infirmities could be pointed out in their evidence.

12. It is not the law that evidence of excise officers or police officers should always be disbelieved and unless there is independent corroboration, prosecution cannot succeed. If, on appreciation of evidence in the case, it is found that evidence of police officers is not suspicious, there is no justification as to why their version cannot be accepted. There is no lacuna in the prosecution case. The lower court was fully justified in accepting their evidence and finding the accused guilty. The finding has only to stand.

13. What now remains to be considered is the question of sentence. It would appear that considering the quantity of article seized from the accused, sentence imposed is very harsh and is not proportionate to the offence committed by the accused. Some leniency is therefore fully justified.

While confirming the conviction passed by the court below for the offence under Section 8(1) of Abkari Act, sentence imposed is set aside and he is sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1 lakh in default of payment of which to suffer simple imprisonment for three months.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.