

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

CRL.A.No.692 of 2006 (F)

AGAINST THE JUDGMENT IN SC 209/2003 of ADDL. SESSIONS COURT
(ADHOC-III), KASARAGODE DATED 25-02-2006

APPELLANT/ACCUSED:

BALAMKAI B.K. NARAYANAN, AGED 45 YEARS,
S/O. UMBUNGAN, RESIDING AT KOTHARAMBATH DESOM,
UDUMA VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT.

BY ADV. SRI.T.K.VIPINDAS

RESPONDENT/COMPLAINANT:

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

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

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
12-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.692 OF 2006

Dated this the 12th day of October, 2015.

J U D G M E N T

The accused was prosecuted for the offences punishable under Sections 8(1) and (2) of Abkari Act. He was found guilty and was therefore convicted and sentenced to suffer simple imprisonment for one year and to pay a fine of Rs.1 lakh with default clause of simple imprisonment for another six months.

2. The incident in this case took place on 11.05.1999. PW1 along with his team of officers while on patrol duty reached a place called Pariyaram. When they reached near an oil mill, they found the accused coming along with a plastic can and a glass. Seeing the Excise Officers, he became nervous and feeling suspicious, can was seized and the contents were examined. The can had a capacity of 5 litres and it was found to contain almost 3 litres of liquid. By smell and taste, it was identified as arrack. The accused was arrested as per Ext.P1 arrest memo. The can which was seized is marked as M.O.1 and glass as M.O.2. PW1

says that 300 ml of arrack was taken as sample and it was sealed and labeled. The label contained the signature of the accused, witnesses and PW1. So also balance quantity. The mahazar prepared is marked as Ext.P2. PW1 took the seized articles, records and the accused to the Station. PW5 who was the Station House Officer took custody of the articles and Ext.P3 is the occurrence report prepared by him. He sent the articles and the accused to the court on the very next day and the property list and forwarding note prepared by him are marked as Exts.P4 and P5. The sample was forwarded for chemical analysis and Ext.P6 report was obtained. PW6, Village Officer, prepared location plan in the case. PW7 verified the records and laid charge before court.

3. 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, Kasaragod under Section 209 Cr.P.C after following necessary procedures. The said court made over the case to Additional Sessions Court (Ad hoc) III,

Kasaragod 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 8(1) and (2) of Abkari Act, to which, the accused pleaded not guilty and claimed to be tried.

4. The prosecution therefore had PWs 1 to 7 examined and Exts.P1 to P8 marked. M.O.s 1 and 2 were got identified and marked.

5. 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 also added that on 12.05.1999, marriage of the daughter of his brother was to be conducted and on the previous day he had purchased four bottles of Indian Made Foreign Liquor from the Beverages Corporation. Due to animosity of the neighbours, he was trapped with the help of the Excise Officials.

6. Finding that the accused could not be acquitted under Section 232 Cr.P.C, he was asked to enter on his defence. He examined DWs 1 and 2 and had Exts.D1 to D5 marked.

7. The court below, on analysis of the evidence, came to the conclusion that the offence has been made out and accordingly convicted and sentenced the accused as already mentioned. The said conviction and sentence are assailed in this appeal.

8. Learned counsel appearing for the appellant very vehemently contended that the documents produced by the defence have been conveniently ignored and due consideration has not been given to the documents. The marriage of the daughter of the brother of the appellant was fixed on 12.05.1999 and the incident took place on 11.05.1999. The accused would say that he had bought four bottles of Indian Made Foreign Liquor and had come home and later in the evening Excise Officers came to his house and took him away. It was contended that no incident as alleged has taken place and that would be evident from the records also. Learned counsel emphasised that quantity of liquor that is alleged to be in possession of accused is shown approximately and not actual quantity seized. Learned counsel went on to point out that production of Ext.D1 and various

complaints filed before the authorities by the wife of the accused will clearly show that it is a cooked up story. It is therefore contended that the conviction and sentence cannot stand.

9. Learned Public Prosecutor, on the other hand, contended that the fact that the articles were seized from the possession of the accused is an admitted fact. The only dispute was whether it was arrack or it was Indian Made Foreign Liquor which the accused is alleged to have bought from the Beverages Corporation. The evidence of PWs 1 and 2 are clear and convincing enough to show that the incident has occurred as alleged and the contemporaneous document namely, Ext.P2 fortifies the same. Further, prompt production of the articles and the accused before court on the very next day shows the veracity of the prosecution case. Merely because certain documents have been produced by the defence, it does not lead to the conclusion that they are true. The receipt produced for having purchased Indian Made Foreign Liquor does not contain the name of the accused. It would have been bought by somebody and that will not be much help to the accused. It is contended that the court

below has clearly analysed the evidence and come to the conclusion that the offence has been made out. There are no grounds made out to interfere with the conviction and sentence passed by the court below.

10. After having heard the learned counsel for the appellant and also the learned Public Prosecutor, this Court finds no reason to interfere with the findings of the court below.

11. The evidence regarding detection is furnished by PWs 1 and 2. PW1 is the detecting officer. He, at the relevant time, was working as Preventive Officer attached to Special Squad, Kanhangad. He would say that on 11.05.1999 at about 5 p.m, he had gone for patrol duty along with other officers and they reached a place called Pariyaram and when they reached near an oil mill, they found the accused holding a can in one hand and a glass in another hand. Since he became nervous, feeling suspicious, can in his possession was seized in the presence of the witnesses. It was found that the can contained about 3 litres of arrack. He would further say that as per Ext.P1 arrest memo, the accused was arrested and he was informed about the reason

for the same. PW1 speaks about taking of sample, preparation of mahazar etc. He also says that he thereafter went to the Station and handed over the article and the accused to the officer in charge of the Station.

12. The evidence regarding detection is spoken to by PW1. PW1 gets substantive corroboration at the hands of PW2 who had accompanied PW1 for patrol duty. He speaks about the incident in uniformity with the version given by PW2. It is therefore unnecessary to refer to his evidence in detail. In spite of cross examination, nothing could be brought out in the evidence of PWs 1 and 2 to show that the incident has not taken place as alleged or that they had any ill motive to falsely implicate the accused.

13. It is significant to notice that the article seized, sample drawn, accused and records were all produced before court on the very next day. One may recollect here that detection was in the evening of 11.05.1999. This shows that the accused and the documents were produced before court at the earliest. This further confirms the prosecution case. There would not have

been time to manipulate the records. It was the above facts which have persuaded the court below to accept the prosecution case.

14. It is true that defence had produced Ext.D2 receipt for having purchased four bottles of Indian Made Foreign Liquor. But it does not contain the name of the person who bought the article and it cannot be said that it relates to the purchase made by the accused assuming he did so. It is not suggested to PW1 or PW2 that they had any axe to grind against the accused or that they had falsely implicated him.

15. Under the above circumstances, the court below was perfectly justified in coming to the conclusion that the offence has been made out. No interference is called for in matter of conviction.

16. Faced with the above situation, learned counsel appearing for the appellant pointed out that considering the age of the accused and the quantity of article seized and also the manner in which seizure was made, some leniency may be shown with regard to sentence.

17. Considering the quantity of article seized and the circumstances under which it was seized, it is felt that there is some justification in the submission made by the learned counsel for the appellant.

Thus, while confirming the conviction passed by the court below for the offence under Sections 8(1) and 8(2) of Abkari Act, the sentence awarded by the court below is set aside and instead the accused is sentenced to undergo simple imprisonment for two months and to pay a fine of Rs.1 lakh in default of payment of which to suffer simple imprisonment for one month. Set off as per law is allowed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.