

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

CRL.A.No. 693 of 2006 ()

**AGAINST THE JUDGMENT IN S.C. 117/2003 of ADDITIONAL SESSIONS COURT
(ADHOC-I), KASARAGOD**

**AGAINST THE ORDER IN CP 153/2000 of JUDICIAL FIRST CLASS MAGISTRATE-II,
HOSDRUG**

APPELLANT(S)/ACCUSED:

**GEORGE THOMAS @ KUNHU, S/O.THOMAS,
AGED 47 YEARS, IDAYAL VEEDU, RESIDING AT CHAVARAGIRI
PALAVAYAL VILLAGE, KASARAGOD DISTRICT.**

BY ADV. SRI.T.K.VIPINDAS

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM
REPRESENTING THE S.H.O.
CHITTARICKKAL POLICE STATION.**

BY PUBLIC PROSECUTOR SRI. C.K. JAYAKUMAR

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 693 of 2006

Dated this the 10th day of September, 2015

J U D G M E N T

The accused was prosecuted for the offences punishable under Sections 55(b) and 55(g) of the Abkari Act. He was found guilty on both counts. He was convicted and sentenced as follows:

“Accused is sentenced to undergo rigorous imprisonment for 3 months and to pay a fine of Rs. 1,00,000/- for the offence punishable under section 55(b) of the Abkari Act and IDRI for a further period of 1 month. The accused is further sentence to undergo rigorous imprisonment for a period of 3 months and to pay a fine of Rs. 1,00,000/- for the offence under section 55(g) of the Abkari Act, IDRI for a further period of 1 month.”

2. The prosecution case is that on 08.11.2000, while PW1, the Sub Inspector of Police was working at the

Chittatrikkal Police Station, he received reliable information that the accused is carrying on illicit distilling of arrack. Since he felt that obtaining a search warrant would be damaging, he proceeded to the spot. He entered the house of the accused with two independent witnesses. They proceeded towards the kitchen. They found that the accused was engaged in illicit distilling utilizing the MOs produced before court. PW1 prepared Ext.P2 search list, a copy of which is given to the accused. He prepared two samples and had the label affixed on them. He then returned to the Police Station and registered the crime as per Ext.P3 FIR. On 13.11.2000, as per Ext.P4 property list, he sent the seized articles to the court. Investigation was done by PW6. He visited the place of occurrence on 09.11.2000 and prepared Ext.P6 mahazar. He claims to have recorded the statements of witnesses. He filed a forwarding note before court which is Ext.P9. Ext.P10 is the chemical analysis report. After investigation, he laid charge

before court.

3. The Judicial First Class Magistrate-II, Hosdurg took cognizance of the offences and finding the offences to be exclusively triable by a Court of Sessions, committed the case to Sessions, Court, Kasaragod which made over the case to Additional Sessions Court (Ad hoc-I), Kasaragod for trial and disposal.

4. On appearance of the accused and on receipt of records, charge was framed for the offences punishable under Sections 55(b) and 55(g) of the Abkari Act. To the charge the accused pleaded not guilty and claimed to be tried. The prosecution therefore had PWs 1 to 6 examined and had Exts.P1 to P10 marked. MOs 1 to 7 were got identified and marked.

5. After the close of 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 claimed that he has been falsely

implicated. According to him, he had a monetary transaction with a Police Constable of the Station and since he had failed to repay the same within the time stipulated, he was called to the Police Station and the case was foisted on him.

6. Finding that the accused could not be acquitted under Section 232 of the Cr.P.C., he was asked to enter on his defence. He examined DW1 and had Exts. D1 and D2 marked.

7. On an appreciation of the evidence in the case, the court below formed the opinion that the prosecution has succeeded in establishing the case against the accused and therefore convicted and sentenced him as already mentioned.

8. Assailing the said conviction and sentence, the learned counsel appearing for the appellant raised only two points for consideration. They are (1) unusually no seizure mahazar is prepared in this case and that has a material bearing on the facts of the case and (2) the articles though

seized on 08.11.2000, reaches the court only on 13.11.2000 for which there is no satisfactory explanation and the facts of the case would disclose that in all probability, the case was a manipulated one. Elaborating on the first point, the learned counsel pointed out that Ext.P2 is the search list said to have been prepared by PW1 on conducting search of the house. Surprisingly enough, according to the learned counsel, the copy given to him does not indicate that samples have been taken, though the original produced before court shows otherwise. PW1 had no explanation for the same. Then again it is pointed out by the learned counsel that the search list does not mention that the labels were affixed on the articles seized from the place of occurrence and the signature of the accused and witnesses were obtained. As regards the second ground, it is contended that no explanation whatsoever is offered to the delay in sending the articles to the court; though seized on 08.11.2000, it was sent to the court on 13.11.2000. This

assumes significance in the sense that the accused has a case that he was falsely implicated and the delay shows that things were being manipulated. These two fatal aspects have been lost sight of by the court below, who simply believed the evidence of PW1 and 2 and found the accused guilty. There has not been a critical analysis of the evidence in the case and a proper appreciation of the evidence.

9. The learned Public Prosecutor very strongly opposed the contentions raised by the learned counsel for the appellant and pointed out that the accused was caught red handed while carrying on distillation and there is no reason as to why this Court should disbelieve the findings entered by the trial court. Evidence have been adduced by the prosecution to show that the house belonged to the accused. In the facts and circumstances of the case, it is therefore pointed out that no interference is warranted in the case.

10. It is true that it may not be necessary as per the provisions of Code of Criminal Procedure to prepare a seizure mahazar. The search list might be satisfactory in the circumstances of the case. But the search list in this case produced before the court on its reverse side, shows the preparation of two samples at the place occurrence and also mentions that the labels were affixed on the samples which contained the signature of the accused and the independent witnesses. But surprisingly enough, there is no such endorsement on the reverse side of the copy of the search list given to the accused. When PW1 was confronted with this anomaly, he had no explanation to offer. Normally, if as a matter of fact, the search list contained the preparation of samples when it was originally drawn up, there would have been a signature of the independent witnesses and the accused below that recital. In Ext.P2, there is no such signature of the accused and the witnesses. One must notice that search list is a contemporaneous document

prepared and is of considerable significance. As rightly pointed out, details of acts done during the alleged sampling is conspicuously absent in search list. This fortifies the contention raised by the accused that in all probability the samples were later drawn up from some other articles already kept in the Station.

11. As far as the second contention is concerned, it is not disputed that the articles was seized on 08.11.2000. PW6 is the Investigating Officer. He claims to have recorded the statements of witnesses. He says he saw the articles in the Police Station. He claims that he took up investigation on 09.11.2000, according to his claim. One fails to understand why he did not take any steps to have the articles immediately sent to court. The articles reached the court only on 13.11.2000. Here one has to notice that there is no statement in the search list that labels were affixed on those MOs which were seized from the place of occurrence and that contained signature of PW1 and the accused.

Except from one of the articles, there was no label found on others. The article on which the label was found, the signature was not legible. Since the prosecution has not been able to explain the delay in forwarding the articles to the court, it does raise a suspicion and it fortifies the contentions raised by the accused that he was falsely implicated.

12. This Court is not overlooking the evidence of PWs 1 and 2. They are Police Officials among them PW1 is the Police Officer, who detected the offence and PW2 had accompanied him. If as a matter of fact, their evidence is found to be above board, there is no reason as to why conviction should not be entered on that basis. But that should be flawless. In the case on hand, the flaws that have been committed, have already been noticed. They are indeed fatal.

For the above reasons, this appeal is allowed. Conviction and sentence passed by the court below are set

aside and it is held that prosecution has failed to establish the case against the accused. His bail bond shall stand cancelled and he is set at liberty.

Sd/-
P.BHAVADASAN
JUDGE

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P.A. to Judge