

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

CRL.A.No. 752 of 2006 (F)

AGAINST THE JUDGMENT IN SC 210/2001 of ADDITIONAL SESSIONS
COURT (ADHOC-I), KASARAGOD.

APPELLANT(S)/ACCUSED:

P.ASHOKA, S/O.PADMANABHA,
PALLA HOUSE, NELLIKKUNNU, KASARAGODE.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENT(S)/COMPLAINANT & STATE:

1. THE EXCISE INSPECTOR, KASARAGODE.

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

BY PUBLIC PROSECUTOR SRI. C.K. JAYAKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 752 of 2006

Dated this the 30th day of September, 2015.

JUDGMENT

The accused was prosecuted for the offence punishable under Section 55(a) of the Abkari Act and he was found guilty of the same. He was therefore convicted and sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs.1,00,000/-, in default, to undergo rigorous imprisonment for one month.

2. The incident occurred on 23.12.1999 in the evening at about 7.30 p.m. P.W.5 the then Circle Inspector of Excise Department as usual had gone on patrol duty in the official vehicle. When they reached Nellikunnu Railway over bridge, the accused was seen standing near a Milma booth with a can in his possession. As soon as he saw the excise team, he tried to hide the can. Feeling suspicious, he was cornered and the article was seized from his possession. On

examination of the contents, the can was seen to contain 10 litres of arrack. P.W.5 took sample from the same and had it sealed and labelled containing the signatures of the accused, witness and himself. The balance quantity was also sealed and labelled as stated above. He prepared Ext.P1 mahazar. P.W.5 along with his team of officers returned to the station and prepared Ext.P2 occurrence report. On the next day the accused and the articles were produced before court. Investigation was taken over by P.W.3. He registered crime as per Ext.P2 and also property list Ext.P3. He also had Ext.P4 forwarding note prepared and obtained chemical analysis report which is Ext.P5. He completed investigation and laid charge before court.

3. The court, before which final report was laid, took cognizance of the offence. Finding that the offence is one exclusively triable by a court of Sessions, the said court committed the case to Sessions Court, Kasaragod. The said court made over the case to Additional Sessions Court (Adhoc-I), Ksasaragod for trial and disposal.

4. The latter court, on receipt of records and on appearance of the accused framed charge for the offences punishable under Section 55(a) of the Abkari Act. To the charge, the accused pleaded not guilty and claimed to be tried. The prosecution therefore had P.Ws.1 to 5 examined and had Exts.P1 to P7 marked. M.O.1 was identified and marked. After the close of the 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 maintained that he is innocent. Finding that he could not be acquitted under Section 232 Cr.P.C., he was asked to enter on his defence. He chose to adduce no evidence.

5. Mainly relying on the evidence of P.Ws.1 and 5, taken along with Ext.P1, the court below was greatly impressed by the prosecution case and found the accused guilty and conviction and sentence as already mentioned followed. The said conviction and sentence are assailed in this appeal.

6. Assailing the conviction, learned counsel for the appellant contended that the conviction and sentence cannot stand for a very simple reason. According to the learned counsel, forwarding note Ext.P4 does not contain the sample seal and that vitiates the prosecution case. Learned counsel highlighted that absence of any seal in the space provided would suggest that no seal was infact affixed in the forwarding note sent to the Forensic Science Laboratory and therefore the report furnished by the Laboratory cannot be relied on. For the above proposition, learned counsel relied on the decision reported in Krishnan v. State (2015(2) K.L.T. SN 8). Learned counsel pointed out that there are other infirmities also in the prosecution case. But this lacuna would be sufficient to order an acquittal.

7. Learned Public Prosecutor pointed out that the evidence furnished by P.Ws. 1 and 5 would be considered in the light of the contemporaneous document Ext.P2 which supports the prosecution case. Ext.P7 statement said to have

been given by one of the witnesses further fortifies the prosecution case.

8. At any rate, according to the learned Public Prosecutor, the trial court has chosen to accept the evidence of P.Ws.1 and 5 and also relied on Exts. P1 to P5 and there is no reason as to why this Court should not interfere with the same.

9. May be it may look highly technical, but it is seen that the forwarding note Ext.P4 provides space for affixing sample seal. The provision providing for affixing sample seal has a purpose to serve. It ensures that a seal has been affixed and it has been affixed in the sample which has been sent to the Forensic Science Laboratory. This Court had occasion to consider the consequence of non-affixing of sample seal in the forwarding note. In the decision reported in Krishnan v. State (2015(2) K.L.T.SN 8) it was held as follows:

“Ext.P5 is a copy of the Forwarding Note submitted before the court for sending sample for subjecting it to chemical analysis. A specific space is provided in the Forwarding Note for affixing the sample seal. No such

sample seal was affixed on Ext.P5. Whether the sample seal was affixed on the original of Ext.P5 sent to the Chemical Examiner? Normally, if the sample seal is not appearing in the copy of the Forwarding Note, in this case it is Ext.P5, it has to be presumed that such sample seal was not affixed on the original Forwarding Note unless proved otherwise. A copy of the Forwarding Note is kept in the office of the court for serving certain purposes. The purposes are evidence from the contents of the form of the Forwarding Note itself. They include the quantity and description of the sample drawn from the bulk of the contraband, the details of the case and the space for providing the sample impression of the seal affixed on the sample taken from the bulk of the contraband. Therefore, as already stated, the absence of sample seal in the space provided in the copy of the Forwarding Note. Is sufficient reason for presuming that the sample seal is not provided in the original Forwarding Note. Of course, this is only a rebuttable presumption. In the case on hand, such presumption has not been rebutted by the prosecution.”

10. In the light of the principle laid down in the above decision, there is no reason as to why the same principle should not be adopted in the case on hand also. In the present case also the particular space is left blank and

that should be fatal to the prosecution case.

Hence, adopting the principle in the decision cited above, this appeal is allowed, the conviction and sentence passed by the trial court are set aside and the accused shall stand acquitted of the charges levelled against him. His bail bond shall stand cancelled and he is set at liberty.

P. BHAVADASAN,
JUDGE

sb.