

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

CRL.A.No. 983 of 2004 ()

SC 119/2003 of ADDL. DISTRICT COURT (ADHOC), KALPETTA

APPELLANT(S)/COMPLAINANT.:

APPACHAN @ JOSEPH
VALADU AMSOM, CHOROR DESOM, MANATHAVADY TALUK
WAYANAD DISTRICT.

BY ADV. SRI.V.P.REGHURAJ

RESPONDENT(S)/ACCUSED.:

STATE OF KERALA, (REP. BY EXCISE INSPECTOR
CRIME NO.22/99)REP. BY STATE, PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
09-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SKV

K.RAMAKRISHNAN, J.

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Crl. Appeal No. 983 OF 2004

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Dated this the 9th day of December, 2015

JUDGMENT

The accused in SC 119/2003 on the file of the Additional Sessions Court (Adhoc) Kalpetta is the appellant herein. The appellant was charge sheeted by the Excise Inspector, Mananthavady Excise Range in CR No. 22/1999 of that Excise Range under Sections 8(1) and 8(2) of the Abkari Act.

2. The case of the prosecution in nutshell was that on 26.11.1999, at about 2.30 pm, the accused was found to be in possession of 30 packets of Karnataka made arrack of 100 ml each and found transitting the same in the bus with No.KLM 5441 plying from Baveli – Mananthavady in violation of the provisions of the Abkari Act and thereby he had committed the above said offence.

3. After investigation, final report was filed before

the Judicial First Class Magistrate's Court-II, Mananthavady, and wherein it was taken on file as CP No.10/2002. After complying with the formalities, the learned Magistrate committed the case to the Sessions Court, Mananthavady where it was taken on file as SC 119/2003 and thereafter it was made over to Additional Sessions Court (Adhoc) Kalpetta for disposal.

4. When the accused appeared before the court below, after hearing both sides, charge under Sections 8(1) and 8(2) of the Abkari Act was framed and same was read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs1 to 6 were examined and Exts.P1 to P6 and MO1 series and MO2 series were marked on their side. After closure of the prosecution evidence, the accused was questioned under Section 313 of the Code of Criminal Procedure (hereinafter referred to as the Code), he had denied all the incriminating circumstances brought against him in the prosecution

evidence. He had further stated that no article was seized from his possession and since he was found in a drunken state he has been taken into custody and the contraband articles found in abandoned state in the bus was used and he has been falsely implicated in the case. Since the evidence in this case did not warrant an acquittal under Section 232 of the Code, the accused was called upon to enter on his defence, but no defence evidence was adduced on his side. After considering the evidence on record, the court below found the appellant guilty under Sections 8(1) and 8(2) of the Abkari Act and convicted him thereunder and sentenced him to undergo simple imprisonment for one year and also pay a fine of Rs.1,00,000/- and in default to undergo simple imprisonment for six months more. Set off was allowed for the period of detention already undergone by him under Section 428 of the Code. Aggrieved by the same, the present appeal has been preferred by the appellant/accused before the court below.

5. Heard the Public Prosecutor Smt. Seena Ramakrishnan and peruse the records.

6. It is seen from the judgment of the court below that the defence taken by the accused was that no article was seized from his possession and the mahazar reached the court very late along with final report and as such it cannot be presumed that articles were produced before the court without delay. Further the seal and the label were not seen at the time when the articles were marked in the court. So it cannot be said that same articles were produced in court without in a tamper proof condition. Further, there is discrepancy in the quantity of the sample mentioned in the chemical analysis report. According to the accused in the court below seizure has not properly proved and the chemical analysis report relates to the representative sample said to have been taken.

7. On the other hand, learned Public Prosecutor submitted that the evidence adduced will go to show that

the prosecution has proved the case beyond reasonable doubt and no interference is called for.

8. The case of the prosecution as emerged from the prosecution witnesses was as follows:

On 26.11.1999, at about 2.30 pm, PW1, the Excise Inspector of Mananthavady Excise Range along with PW2 were doing vehicle checking duty at a junction leading to Edakkad colony near Kartikulam second gate on Mananthavadi Baveli Road. They inspected the bus with No.KLM 5441 and when they were examining the vehicle they found the accused sitting in the bus keeping with MO3 plastic bag on his lap and on seeing the Excise party he was found perplexed. So he examined MO3 plastic cover and found that it contained 30 packets of 100 ml each of Karnataka made arrack with a label on the packets with such description. He took one packet and examined the contents of the packets and satisfied that it was arrack. Thereafter he had taken another packet also and arrack from those two

packets was collected as sample in a bottle and sealed the same and affixed label containing the signatures of himself and accused and he had put the remaining packets marked as MO1 series and the broken packet MO2 series (2 Nos.) in MO3 cover itself and sealed and labelled the same and thereafter seized the same as per Ext.P1 mahazar in the presence of PWs3 and 4 the conductor and driver of the bus. Thereafter he arrested the accused and came to Excise office and registered Ext.P2 occurrence report as crime number 22/1999 of Mananthavady Excise Range against the accused under Sections 8(1) and 8(2) of the Abkari Act. He produced the accused before the court on the same day along with remand report and he was remanded to custody. He prepared Ext.P3 property list and produced the same before the court on the next day. He sent Ext.P4 forwarding note with a request to send the sample for analysis and it was sent from court and Ext.P6 chemical analysis report obtained which shows that sample contained 34.79% by

volume of ethyl alcohol.

9. The investigation in this case was conducted by PW6, he was prepared Ext.P5 scene mahazar in the presence of PW5 and another. He questioned the witnesses and recorded their statements. He collected Ext.P6 chemical analysis report and completed the investigation and submitted final report.

10. PWs3 and 4 are the conductor and driver of the bus respectively. Both of them have admitted their signature in Ext.P1 mahazar and also admitted that they were conductor and driver of the bus at the relevant time. They also admitted the fact that excise officials examined the vehicle and seized arrack from the bus. PW3 had stated that he did not see the excise officials seizing the article from the accused. According to him, the excise officials wanted to the vehicle to be taken to excise office from where he signed the mahazar but he had admitted that there was no force made by the excise officials to sign the

document and normally he will not sign any document without reading the same. PW4 the driver also admitted his signature, but he had stated that he did not know from whom the articles was seized. But he had admitted that accused was also present at that time, when the article was seized. So it is clear from the evidence of PWs 3 and 4 that Excise officials conducted inspection of the bus on that day and seized a cover with arrack and accused was also found in the bus at that time. But they were trying to help the accused and that was the reason why they are not supporting the case of the prosecution.

11. Then the evidence available is that of PWs1 and 2 the detecting officer and the preventive officer who accompanied the detecting officer. PW1 had categorically stated that on that day, he examined the bus and found the accused sitting in one of the seats with MO3 bag on his lap. Since he was found perplexed on seeing the excise officials, he examined the bag and found it contained 30 packets of

100 ml each, with a description of Karnataka made arrack and he examined one such cover and satisfied that it was arrack and thereafter he had taken another packet also and took the liquid from those two packets in a bottle as sample and sealed and affixed label. Thereafter he had kept the remaining packets and the empty packet in MO3 cover itself and sealed the same and affixed label and seized the same as per Ext.P1 mahazar. He had arrested the accused. Then took him to excise office and registered the crime. The evidence of PW1 on these aspects was corroborated by the evidence of PW2, the preventive officer as well. Though they were cross examined at length, nothing was brought to discredit their evidence on this aspect. So under the circumstances, court below was perfectly justified in coming to the conclusion that the prosecution has proved beyond reasonable doubt that the accused was arrested from the bus along with MO3 cover containing 30 packets of 100 ml each liquid said to be Karnataka made arrack.

12. It is seen from the evidence of PW1 that the accused was produced before court on the same day along with Ext.P2 occurrence report and he was remanded to custody. Further it will be seen from the evidence of PW1 that he had produced the articles before the court along with Ext.P3 property list on the very next day itself and he had sent Ext.P4 forwarding note with a request to send the sample for analysis and it was sent from court and then Ext.P6 chemical analysis report obtained. It is true that the seizure mahazar reached the court along with final report. But that alone is not sufficient to come to the conclusion that seizure was not proved. As per Section 36 of the Abkari Act, they need only to send the report of seizure to the court forthwith. In this case, the occurrence report contained the details of seizure and arrest of the accused along with the contraband articles reached the court on the very same day itself. Further the property list along with contraband articles were produced before the court on the

next day itself. The Division Bench of this Court in Ravi v State of Kerala and Another [2011 (3) KHC 121] it has been observed that mere delay in producing the article alone is not sufficient to doubt the genuineness of the articles produced. But in this case there was no delay in producing the articles and report has been sent forthwith as well.

13. Further Ext.P4 forwarding note contains the specimen seal impression of the seal used for sealing the article as well. Court below also verified MO3 bag which contained the impression of the seal. Though the seal was not found on the packet and the court below came to the conclusion that loss of seal may be due to the lapse of time after production of the same before the court. Further the evidence of PWs1 and 2 will go to show that they have taken the entire liquid found in MO2 series as sample packets without making any waste and they have only touched the liquid and taste of the same for the purpose of satisfaction as whether it is arrack or not. So the court below had

correctly come to the conclusion that there was no discrepancy in the quantity of the sample mentioned in the chemical analysis report so as to come to a conclusion that it was not the sample that was taken from the contraband article and sent for examination and the chemical analysis report did not relate to the representative sample said to have been taken. So under the circumstances, court below was perfectly justified in coming to the conclusion that prosecution has proved beyond reasonable doubt that the accused was found to be in possession of 30 packets of Karnataka made arrack of 100 ml each, possession of which is prohibited and punishable under Section 8(1) read with Section 8(2) of the Abkari Act and rightly convicted him for the said offence.

14. As regards the sentence is concerned, the court below had sentenced him to undergo simple imprisonment for one year and also to pay a fine of Rs.1,00,000/- and in default to undergo simple imprisonment for six months.

The possession of arrack is prohibited after 3.6.1997 and it punishable under Section 8(1) read with Section 8(2) of the Abkari Act. Further in this case, the arrack found was made from Karnataka. So he was importing the same from Karnataka for the purpose of sale in Kerala. Persons who are committing the offence under the Abkari Act are doing the same knowing that what they were doing is a grave offence, ignoring the consequence of their act on innocent persons who are consuming articles that is being sold by them. Showing undue leniency in such cases will only give a wrong signal to the society and it will cause loss of confidence for the people in the criminal justice delivery system itself. The court below had only imposed minimum fine and also the sentence awarded cannot be said to be excessive as well. So under the circumstances, this court do not find any reason to interfere with the sentence imposed also as it appears to be just and proper.

In the result the appeal fails and the same is hereby

dismissed. The order of conviction and sentence passed by the court below against the appellant under Section 8(1) read with Section 8(2) of the Abkari Act is hereby confirmed.

Office is directed to communicate this judgment to the court below at the earliest.

Sd/–
K.RAMAKRISHNAN, JUDGE

SKV