

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

CRL.A.No. 984 of 2004 ()

AGAINST THE JUDGMENT IN SC 680/2002 of ADDL.SESIONS JUDGE,
(FAST TRACK-I), ALAPPUZHA, DATED 31-05-2004

APPELLANT(S)/ACCUSED.:

PRASAD, AGED 38 YEARS, S/O. SUNDARAN,
VANCHIPURAKKAL VEEDU,
MAHADEVIKADU MURI, KARTHIKAPALLY.

BY ADV. SRI.S.SHANAVAS KHAN

RESPONDENT(S)/COMPLAINANT.:

THE STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SS

K. RAMAKRISHNAN, J.

.....
Crl. Appeal No.984 of 2004

.....
Dated this the 13th day of October, 2015

J U D G M E N T

Accused in S.C.No.680/2002 on the file of the Additional Sessions Judge (Fast Track-I), Alappuzha, is the appellant herein. The appellant was charge-sheeted by the Excise Inspector, Karthikappally Excise Range in Crime No.1/2000 of that Excise range under Section 8(1) of Abkari Act.

2. The case of the prosecution in nut shell was that, on 05.11.2000 at about 08.00 p.m., the accused was found to be in possession of 2^{1/2} liters of arrack, found transitting the same for the purpose of sale in violation of the Provisions of Abkari Act and thereby he had committed the offence punishable under Section 8(1) of the Kerala Abkari Act.

3. After investigation, final report was filed before the Judicial First Class Magistrate Court-I, Haripad,

where it was taken on file as C.P.No.23/2002. Thereafter it was committed to the Sessions Court, Alappuzha, by the learned magistrate under Section 209 of the Code of Criminal Procedure. After committal, the learned Sessions Judge took cognizance of the case as S.C.No.680/2002. Thereafter the case was withdrawn by the Sessions Judge and made over to Additional Sessions Court (Ad-Hoc-I), Alappuzha for disposal.

4. When the accused appeared before the court below, after hearing both sides, charge under Section 8 of the Abkari Act was framed and the same was read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 6 were examined and Exts.P1 to P5 and MO1 were marked on their side. After closure of the prosecution evidence, the accused was questioned under Section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution

evidence. He had further stated that, he had taken from his house and illegally kept in custody and thereafter falsely implicated in the case and produced before the court. Since the evidence in this case did not warrant an acquittal under Section 232 of the Code of Criminal Procedure, the Additional Sessions Judge directed the accused 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 Section 8 of the Abkari Act and convicted him thereunder and sentenced him to undergo simple imprisonment for three years and also to pay a fine of ₹1,00,000/-, in default to undergo simple imprisonment for one year more. Set off was allowed for the period of detention already undergone by him in this case under Section 428 of the Code of Criminal Procedure. Aggrieved by the same, the present appeal has been preferred by the appellant/ accused before the court below.

5. Heard Smt.Indu, counsel representing

Sri.S.Shanavas Khan, counsel appearing for the appellant and Sri.Jibu P. Thomas, learned Public Prosecutor appearing for the State.

6. The counsel for the appellant submitted that, independent witnesses to the seizure did not support the case of the prosecution, though they admitted the signature in Ext.P1. They have got a case that it was signed at 7.30 a.m while they were going for work. Further the evidence of PWs 1 and 2 is highly unbelievable as it is not probable to prepare Ext.P1 mahazar in the light of torch as claimed by them, that throws some suspicion regarding the arrest and seizure. So the court below was not justified in convicting the appellant for the offence alleged. Learned counsel also submitted that, if any reason this court is not inclined to interfere with the conviction, she prayed for leniency in the sentence.

7. On the other hand, learned Public Prosecutor submitted that there is nothing brought out to discredit the

evidence of PWs 1 and 2 regarding the seizure and arrest of the accused and there was no delay in producing the article before court and false implication has not been established by the accused. So under the circumstances, court below was perfectly justified in convicting the appellant for the offence alleged and no interference is called for.

8. The case of the prosecution in nut shell was that, on 05.11.2000 at about 08.00 p.m., while PWs 1 and 2 who were working as preventive officers attached to Excise Enforcement and Anti Narcotic Special Squad, Alappuzha and while they were doing patrol duty, they got information that one person was selling arrack behind the Srikrishna theater. Immediately they went to that place and saw one person coming with MO1 cannas and on seeing the excise party, he tried to go away from that place. So they stopped him. PW1 examined the contents of the cannas and found that it contained 2^{1/2} liters of some liquid and on verification by smelling and tasting, he was satisfied that it was arrack

and he convinced the same to PW2 and the independent witnesses who were present there. Thereafter he arrested the accused. He had taken sample from the liquid and sealed the sample bottle and labeled the same with signatures of himself, accused and the witnesses. He had sealed and labeled MO1 kannas also in the same fashion and seized the same as per Ext.P1 mahazar in the presence of PWs 3 and 4. Thereafter he along with the accused and the contraband articles seized came to Karthikappally Excise Range and entrusted the same to PW5/ Excise Inspector attached to that office. On the basis of the documents produced, PW5 registered Ext.P2 crime and occurrence report as Crime No.1/2000 of Karthikappally Excise Range against the accused under Section 8 of Abkari Act. He had kept the articles in his possession and kept the accused in the lockup. Thereafter he produced the accused along with remand report on the next day. He had produced the thondy articles along with Ext.P3 property list

on the next day itself. He had given Ext.P4 requisition with forwarding note to send the sample for chemical analysis and the sample was sent from court to chemical examiners laboratory and Ext.P5 chemical analysis report was obtained. Further investigation in this case was conducted by PW6, the successor Excise Inspector. He questioned the witnesses and recorded their statements. He collected Ext.P5 chemical analysis report and produced the same before the court. He completed the investigation and submitted final report.

9. PWs 5 and 6 are independent witnesses to the seizure. Though they admitted their signatures in Ext.P1 mahazar, they denied having seen the arrest and seizure of the contraband article from the possession of the accused. According to them, they signed the paper in the morning at 7.30 a.m., but they do not remember the date. But it could not be correct because the entire documents prepared at the time of seizure were produced before PW5 on the night

itself and it reached the court on the next day itself. So it is clear from the evidence that they are now trying to help the accused and that was the reason why they are not supporting the case of the prosecution.

10. Then the evidence available is that of PW1, the preventive officer who detected the crime and PW2 another preventive officer who accompanied him. PW1 had categorically stated that on that day while they were doing patrol duty and when they reached near Srikrishna theater they got information that somebody was selling arrack from behind the theater, immediately they went there and found the accused coming with MO1 cannas and they arrested him and seized the contraband articles after taking sample, sealing and labelling both the sample bottle and the cannas as per Ext.P1. Thereafter they came to Karthikappally Excise Range and entrusted the accused, contraband articles and the documents prepared to the Excise Inspector. PW2 the accompanying officer also corroborated

the evidence of PW1 on this aspect. Though they were cross examined at length, nothing was brought out to discredit their evidence on this aspect. Both of them have stated that with the help of the writing pad and the light of the torch they have prepared the seizure mahazar from the place of occurrence itself. There is nothing to disbelieve their evidence on this aspect.

11. It is settled law that merely because witnesses to the seizure did not support the case of the prosecution is not a ground to disbelieve the prosecution case as such. Court can rely on the evidence of official witnesses, if it is believable and trustworthy and base conviction on that basis. In this case, the case of the accused was that, he was arrested from his house and kept in the Excise office and then falsely implicated. But no evidence has been adduced on his side to prove his false implication. So under the circumstances, court below was perfectly justified in coming to the conclusion that the false

implication suggested by the accused has not been established and rightly believed the evidence of PWs 1 and 2 and came to the conclusion that the prosecution has proved beyond reasonable doubt that the accused was arrested along with MO1 kannas with some liquid said to be arrack and the arrest and seizure are proper.

12. It is seen from the evidence of PW5 that the articles along the accused were produced before him on the date of detection itself and he had taken custody of the same and kept the same in his custody and registered the crime on the next day and he produced the accused and the contraband articles before court. Ext.P3 property list shows that the articles produced before court on the next day itself. So there is no delay in producing the article. Further it will be seen from Ext.P4 requisition letter that the specimen seal impression of the seal used for sealing the sample was also provided and Ext.P5 chemical analysis report shows that the sample seen on the bottle was intact

and found tallied with the specimen seal provided. So there is no possibility of any tampering of the article before it was produced before court. Further the accused had no case that the articles seized was arrack. Even suggestion given to the Excise officials was that, the arrack kept in the Excise Office was used and he has been falsely implicated in the case. So the prosecution has proved beyond reasonable doubt that the accused was found to be in possession of 2^{1/2} liters of arrack, possession of which is an offence punishable under Section 8(1) read with Section 8(2) of the Abkari Act and the court below was perfectly justified in convicting the appellant for the offence under Section 8(1) read with Section 8(2) of the Abkari Act.

13. The court below had sentenced the accused to undergo simple imprisonment for three years and also to pay a fine of ₹1,00,000/-, in default to undergo simple imprisonment for one year more. Set off was allowed for the period of detention already undergone by him under

Section 428 of the Code of Criminal Procedure.

14. As regards Abkari offences are concerned, the persons who are committing the offence are doing the same knowing that it is an offence and unmindful of the consequences of their act of selling arrack, which is prohibited and illegally manufactured ignoring the consequences of their act on the persons who are consuming the same. Showing undue leniency in imposing the sentence on such persons will only give a wrong signal and cause loss of confidence for the public in the criminal justice delivery system. But at the same time, court can consider the attending circumstances like the family background of the accused, his antecedents, age and possibility of reformation etc. while imposing the sentence. In this case there is no evidence on the part of the prosecution to show that he had involved in any other crime of similar nature earlier. He was aged only 38 years at the time of committing the crime and the quantity involved is

only 2^{1/2} liters of arrack. So considering these aspects, this court feels that sentencing the accused to undergo simple imprisonment for nine months and also to pay a fine of ₹ 1,00,000/-, in default to undergo simple imprisonment for three months more will be sufficient and that will meet the ends of justice. So the substantive sentence and default sentence imposed by the court below are set aside and the same is modified as follows:

The appellant is sentenced to undergo simple imprisonment for nine months and also to pay a fine of ₹1,00,000/-, in default to undergo simple imprisonment for three months. Set off is allowed for the period of detention already undergone by him under Section 428 of the Code of Criminal Procedure.

In the result, the appeal is allowed in part. The order of conviction and sentence of fine of ₹1,00,000/- imposed by the court below against the appellant under Section 8(1) read with Section 8(2) of the Abkari Act are

hereby confirmed. The substantive sentence and default sentence are set aside and the same is modified as follows:

The appellant is sentenced to undergo simple imprisonment for nine months and also to pay a fine of ₹1,00,000/-, in default to undergo simple imprisonment for three months. Set off is allowed for the period of detention already undergone by him under Section 428 of the Code of Criminal Procedure.

Office is directed to communicate this judgment to the concerned court, immediately.

Sd/-

K. RAMAKRISHNAN, (Judge)

//True Copy//

P.A. to Judge

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