

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

CRL.A.No. 354 of 2007 (E)

AGAINST THE JUDGMENT IN SC 104/2005 of ADDL.DISTRICT AND
SESSIONS COURT FAST TRACK (ADHOC-I), KOZHIKODE DATED 24-01-2007

APPELLANT/ACCUSED:

RAVEENDRAN, S/O.VASU,
PANDIYADATH HOUSE, ELATHUR AMSOM DESOM,
KOZHIKODE TALUK.

BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.SABU SREEDHARAN

RESPONDENT/STATE:

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

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

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.354 OF 2007

Dated this the 16th day of September, 2015.

J U D G M E N T

The accused was prosecuted for the offence punishable under Section 55(a) of Abkari Act read with Rule 9 of Foreign Liquor Rules. He was found guilty and was therefore convicted and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.1 lakh with default clause of rigorous imprisonment for six months. Set off as per law was allowed.

2. The incident in this case occurred on 18.07.2002. According to the prosecution, while PW6, Assistant Excise Inspector, was on patrol duty along with other officers, they received an information that the accused was dealing with Indian Made Foreign Liquor. PW6 says that he prepared the search memo and conducted search of the house of the accused. On search they found a card board box in which they found three bottles having a capacity of 750 ml with a label dimond delux whisky, 3Dxxx Rum in two bottles having capacity of 750 ml,

No.1 doctors brandy in one plastic bottle having capacity of 750 ml and 7 bottles having capacity of 375 ml with a label Royal Trust Finex-brandy. They seized the said articles from the place. He arrested the accused. Ext.P8 is the arrest memo. Inspection memo is Ext.P9. He then speaks about taking of sample in each of the three bottles and affixing of label on those samples containing the signature of the accused, witnesses and himself. The search list prepared by him is Ext.P10 which contains the signature of the accused. He then claims to have prepared Ext.P11 mahazar. He then speaks about having gone to the Excise Range Inspector and produced the articles and accused before him. On production of accused and articles before him, PW4 registered a case against the accused and Ext.P3 is the occurrence report. He prepared the property list, Ext.P4 and also the forwarding note, Ext.P5. The chemical analysis report received is Ext.P6. PW9 took over the investigation. He recorded the statement of witnesses and laid charge before court.

3. The Judicial First Class Magistrate Court, Kozhikode before whom 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, Kozhikode. That court made over the case to Additional District and Sessions Court Fast Track (Adhoc-I), Kozhikode for trial and disposal. The latter court, on receipt of records and on appearance of the accused, framed charge for the offence punishable under Section 55(a) of Abkari Act read with Rule 9 of Foreign Liquor Rules. To the charge, accused pleaded not guilty and claimed to be tried.

4. The prosecution therefore had PWs 1 to 9 examined and Exts.P1 to P11 marked. M.O.s 1 o 5 were also 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 claimed to be an autorickshaw driver. He would say that after alighting a passenger, he had gone to a tea shop of one Sankaran and at that time a person who was sitting nearby ran away on seeing

the excise jeep. The excise officer came near the accused and asked him whether the cardboard box found in the teashop belonged to him. Though he denied the same, he was whisked away by the excise officer.

6. Finding that the accused could not be acquitted under Section 232 Cr.P.C, he was asked to enter on his defence. He chose to adduce no evidence.

7. On appreciation of the evidence, court below came to the conclusion that the offence has been made out. Conviction and sentence as already mentioned followed. The said conviction and sentence are assailed in this appeal.

8. Learned counsel appearing for the appellant raised a very short ground for consideration before this Court. According to the learned counsel, the Assistant Excise Inspector was not a competent officer and if that be so, entire detection falls to the ground and the conviction and sentence cannot stand. PW6 is only an Assistant Excise Inspector and his evidence would show that he detected the offence. Learned counsel relied on the decisions in **Haridas** vs. **State of Kerala** (2015 (2) KLT 958)

and in **Narayanankutty vs. State of Kerala** (2015 (2) KLT S.N 18).

9. It has to be said that the contention is a formidable one. This Court had occasion to consider the consequence of an incompetent officer conducting an investigation and also laying charge. In the case on hand, PW6 is admittedly an Assistant Excise Inspector who, as per the notification then in force, was not a competent officer. In the decision in **Haridas vs. State of Kerala** (2015 (2) KLT 958), it was held as follows:

"6. P.W.5 deposed before the court that he had conducted the investigation of the case as directed by the Assistant Excise Commissioner, Pathanamthitta. The Assistant Excise Commissioner had no authority to empower P.W.5 to conduct the investigation of the case. Such power must be conferred on P.W.5 by a notification issued by the Government of Kerala under S.4 of the Abkari Act. In the absence of such a notification, the investigation conducted by P.W.5 cannot be accepted to be a legal one even if it was done as directed by the Assistant Excise Commissioner, Pathanamthitta.

7. Since the investigation of the case had been conducted by an incompetent officer, the court below had no jurisdiction to take cognizance of the offence

alleged in the complaint filed based on such investigation. Consequently, the court below could not have framed charge against the appellant as it was without jurisdiction. The trial which followed after framing the charge must be treated as non est in the eye of law as it was done without jurisdiction . As the trial was conducted without jurisdiction by the court below, it cannot end either in conviction or in acquittal. Therefore, the conviction and sentence passed by the court below against the appellant are liable to be set aside. He is entitled to be discharged in this case.”

10. In the decision in **Narayanankutty vs. State of Kerala** (2015 (2) KLT S.N 18), it was held as follows:

“In the light of the provisions of S.R.O No.321 of 1996 as interpreted by this Court in this ruling (2010 (3) KLT 471), a Sub Inspector of Police authorised to act as Abkari Officer can exercise his jurisdiction only within the territorial limits of his police station. Therefore, PW6, the Sub Inspector of Police, Hemambika Nagar Police Station, had exceeded the limits of his jurisdiction by investigating the case on hand which was within the territorial limits of Kongad Police Station”.

11. True, this is a case where the authorised officer of one area transfers his territorial jurisdiction and conducted the

investigation of a case which does not come under his jurisdiction. An Abkari Act defines an Abkari Officer in Sections 4 and 5 so also in Section 17. It is well settled by now that only a person who is authorised to conduct investigation can do so under the provisions of the Abkari Act. Assistant Excise Inspector at the relevant time was incompetent to detect or investigate the offence. Going by the above decisions, any act done by an incompetent officer cannot be given legal sanction.

For the above reasons, this appeal is allowed. The conviction and sentence passed by the court below are set aside and the accused is acquitted of the charge levelled against him. His bail bond shall stand cancelled and he is set at liberty.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.