

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

CRL.A.No. 659 of 2005 ()

SC 43/2004 of ADDITIONAL DISTRICT COURT (ADHOC-I), PALAKKAD

APPELLANT(S)/ACCUSED:

**RAMADAS
KARINGULANGARA VEEDU, KINAVALLUR, PARALI-I VILLAGE
PALAKKAD TALUK.**

BY ADV. SRI.N.K.KARNIS

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA
DIRECTOR GENERAL OF PUBLIC PROSECUTIONS
HIGH COURT OF KERALA, ERNAKULAM.**

R1 BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

SKV

K.RAMAKRISHNAN, J.

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Crl. Appeal No.659 OF 2005

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Dated this the 1st day of October, 2015

JUDGMENT

Accused in SC 43/2004 on the file of the Additional Sessions Court (Fast Track Court -I) is the appellant herein. The appellant was charge sheeted by the Excise Inspector of Parali Excise Range in Crime No.11/2001 of that Excise Range under Section 55 (a) and (i) of Abkari Act.

2. The case of the prosecution in nutshell was that on 5.7.2000, at about 5.00 pm, the accused was found to be in possession of 18 bottles of Indian made foreign liquor of which 5 bottles of 375 ml. Johars Fine Brandy and 14 bottles of 180 ml. Black Panther XXX Rum and found transitting the same in a plastic bag through Paralikadavu-Railway Station Road in front of Rasathandra Pharmaceuticals in violation of the provisions of Abkari Act and thereby he had committed

offence punishable under Section 55(a) of Abkrai Act.

3. After investigation, final report was filed before the Judicial First Class Magistrate Court -II Palakkad where it was taken on file as CP No.72/2003. After complying the formalities, the learned Magistrate committed the case to Sessions Court Palakkad, under Section 209 of Code of Criminal Procedure(hereinafter referred to as the Code) where it was taken on file as SC 43/2004. Thereafter the case was originally made over to Additional Assistant Sessions Court, Palakkad for disposal. But later the case was withdrawn and made over to Additional Sessions Court (Fast Track Court-I) Palakkad for disposal by the learned Sessions Judge.

4. When the accused appeared before the court below, after hearing both sides, charge under Section 55 (a) of Abkari Act was framed and the same was read over and explained to him and he pleaded not guilty. In

order to prove the prosecution, PWs 1 to 5 were examined and Ext.P1 to P6 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) and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that he had not committed any offence 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 Section 55(a) of Abkari Act, convicted him thereunder and sentenced him to undergo simple imprisonment for one year and also to pay a fine of Rs.1,00,000/-, in default to undergo simple

imprisonment for six months. Set off was allowed for a 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 Sri.Latheesh Sebastian counsel representing N.K. Karnis counsel for the appellant and Smt. Seena Ramakrishnan learned Public Prosecutor appearing for the State.

6. The counsel for the appellant submitted that there is no evidence to show that it was intended for sale and also it was illicit liquor so as to attract the offence alleged as well. The independent witnesses to seizure did not support the case of the prosecution. So the court below was not justified in convicting the appellant for the offence alleged and he is entitled to get acquittal. He had further argued that mere possession of excess quantity of

Indian made foreign liquor will not amount to an offence under Section 55(a) of Abkari Act and it may at the most only amount to an offence under Section 63 of the Abkari Act.

7. On the other hand, the learned Public Prosecutor submitted that the evidence adduced on the side of prosecution proved the guilt of the accused beyond reasonable doubt and also that he was not having any documents in his possession. So the presumption under Section 64 of the Act can be attracted. The court below was perfectly justified in convicting the appellant for the offence alleged.

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

On 5.7.2000, at about 5.00 pm, while PW1 the Excise Inspector along with PW2 Preventive Officer were doing patrol duty and when they reached the place of

occurrence, they saw the accused coming with plastic bag and on seeing the Excise party, he tried to go away from the place. So they stopped him and on examination of the plastic bag by PW1, it was revealed that it contained 22 bottles, which were later identified as MO1 series containing Indian made foreign liquor which they satisfied on examination of liquid from one of the bottles. So he arrested the accused and prepared Ext.P2 arrest memo and sealed the articles and seized the same after affixing label containing the signature of himself and the accused as per Ext.P1 mahazar in the presence of PWs3 and 4. Thereafter he came to office and registered Ext.P3 crime and occurrence report as Crime No.11/2001 of Parali Excise Range under Section 55(a) of the Abkari Act against the accused. Thereafter he produced the accused along with remand report before court and he was remanded to custody. He produced the articles along with

thondi list and also with Ext.P4 forwarding note with a request to send one bottle each taken from each category as sample for chemical analysis and they were sent from court and Ext.P5 chemical analysis report was obtained. The investigation in this case was conducted by PW5. He questioned the witnesses and recorded their statements. He completed the investigation and submitted final report.

9. PWs3 and 4 were the independent witnesses to the seizure. They admitted that they knew the accused and also admitted their signature in Exts.P1 and P2 seizure mahazar and arrest memo respectively, but they denied having seen the arrest of the accused and seizure of the articles from the possession of the accused. So it is clear from their conduct that they were now trying to help the accused and that was the reason why they were not supporting the case of the prosecution.

10. The evidence of PWs 1 and 2 will go to show

that while they were doing patrol duty, they saw the accused coming with a plastic bag and when he tried to retreat on seeing them, they stopped him and on verification of the plastic bag, they found 22 bottles of Indian made foreign liquor. It was also stated by them that the accused told that it was purchased from the outlet of Civil Supplies Corporation at Palakkad and according to them, the accused told that it was intended for sale but except that alleged confession which is not admissible in the evidence, there is no evidence to prove that it was intended for sale. Further the prosecution had no case that it was illicit liquor or it was not intended to be sold in Kerala as well.

11. So it is settled law that mere possession of excess quantity of foreign liquor alone is not sufficient to attract the offence under Section 64 of Abkari Act, though there is presumption under Section 55(a) of the Abkari

Act, though there is a presumption under Section 64 of the Act that if possession of liquor is proved, unless the contrary is proved, the court shall presume that it was the purpose mentioned under Section 55 of the Act. But in this case the prosecution has no case that it was not obtained from any authorized outlet. The only case of the prosecution is that he was not having any permit to hold excess quantity. Then such a presumption is not applicable unless it is proved by the prosecution that what was seized was illicit liquor. What is the offence attracted in such cases is considered by this court in **Mohanan V State of Kerala** [2007 (1) KLT 845], where it was held that Section 55(a) of the Abkri Act deals with only illegal import, export, transport or transit and only if a person illegally imports, transport liquor or in possession of liquor while illegally importing it and in that decision, it was held that if the possession of liquor is not an illicit liquor, then

no offence under Section 55(a) of Abkari Act is attracted, but only offence under Section 63 of the Abkari Act is attracted for possession of the excess quantity of liquor than the permitted limit. The same view has been reiterated in the decision reported in **Nobbey v State of Kerala** [2011 (1) KLT SN 51 (CNo.68)]

12. In view of the dictum laid down in the above decisions and also the evidence available on record, the finding of the court below that the accused had committed the offence punishable under Section 55(a) of the Abkari Act is unsustainable in law and the same is liable to be set aside and he is entitled to get acquittal of that charge levelled against him giving him the benefit of the above decision. But he is liable to be convicted for the offence under Section 63 of the Abkari Act for possession of excess quantity of Indian made foreign liquor without any document. So the conviction is converted to one under

Section 63 of the Abkari Act.

13. In view of the finding that the accused had committed offence under Section 63 of the Abkari Act, the sentence imposed by the court below under Section 55(a) of the Abkari Act is not sustainable and the same is also liable to be set aside. But the appellant is sentenced to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for two months under Section 63 of the Act. So the appeal is allowed in part. The order of conviction and sentence passed by the court below against the appellant under Section 55(a) of the Abkari Act is set aside he is acquitted of that charge but the appellant is found guilty for the offence under Section 63 of the Abkari Act and he is convicted thereunder and he is sentenced to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one month. If the appellant had remitted any fine amount in excess of the fine amount as

mentioned above, the court below is directed to refund the excess amount to him on making such application for that purpose.

So with the above modification of the conviction and sentence passed by the court below, the appeal is allowed in part and disposed of accordingly.

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

Sd/ –

K.RAMAKRISHNAN, JUDGE

SKV