

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

CRL.A.No. 704 of 2005 ()

**AGAINST THE JUDGMENT IN SC 114/2001 of ADDITIONAL DISTRICT COURT (ADHOC),
FAST TRACK COURT - I, TRIVANDRUM**

APPELLANT(S):

**ABDUL RAFEEL, S/O.MOHAMMED HANEEFA,
PUNNAVILA VEEDU, NEAR ASSARIMUKKU, MELEVETTOOR
VETTOOR VILLAGE.**

BY ADV. SRI.S.RAJEEV

RESPONDENT(S):

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
(CR.NO. 65/1998 OF VARKALA POLICE STATION).**

R1 BY ADV. PUBLIC PROSECUTOR SMT. P. MAYA

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21-05-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

P.UBAID, J.

Crl. Appeal No. 704 of 2005

Dated this the 21st day of May, 2015.

J U D G M E N T

The appellant herein challenges the conviction and sentence against him under Section 55(a) of the Kerala Abkari Act. He faced prosecution before the Court of Session, Thiruvananthapuram on the allegation that at about 10.15 p.m on 16.2.1998 he was found possessing 600 ml of arrack contained in six packets of 100 ml capacity. The offence was detected by the Sub Inspector of Police, Varkkala. The accused was arrested on the spot by the Sub Inspector, and the six packets of arrack were seized as per mahazar. Seizure and arrest were made at the compound of Mangad Madan Nada Temple at Vettoor. The police version is that the Sub Inspector made seizure on the basis of secret reliable information received by him. The learned Additional Sessions Judge (Fast Track-I) Thiruvananthapuram, framed a charge against the accused under Section 55(a) and 55(b) of the Kerala Abkari Act. The prosecution examined only two witnesses before the

trial court and marked Exts. P1 to P3 documents and also MO.I and MO.II series properties. MO.II series are the five polythene covers allegedly containing arrack, seized from the hands of the accused, and MO.I is an empty plastic cover, which according to the police, contained arrack. The accused denied the incriminating circumstances, when examined under Section 313 Cr.P.C also. No evidence was adduced in defence by the accused. On an appreciation of the evidence adduced by the prosecution, the learned trial judge found the appellant guilty under Section 55(a) of the Kerala Abkari Act. Instead of making a conviction under Section 8(2) of the Kerala Abkari Act, which is the specific and independent section dealing with illicit possession of arrack, the learned trial judge made the conviction under Section 55(a) of the Kerala Abkari Act. On conviction the accused was sentenced to undergo rigorous imprisonment for 1 ½ years and also to pay a fine of ₹ 1,00,000/-. Aggrieved by the conviction and sentence the accused has come up in appeal.

2. When the appeal came up for hearing the learned counsel for the appellant submitted that the appellant challenges the conviction mainly on the ground that there is

absolutely no material or evidence in this case to prove that the sample analysed in the laboratory is in fact the liquid seized from the hands of the accused. To prove that it was arrack the prosecution relies on the Ext.P3 report of analysis. It is submitted that the Ext. P1 mahazar or the evidence of the material witnesses does not contain anything to show that any sample was collected on the spot by the detecting officer. I find force in the arguments made by the appellant, and I further find that the prosecution in this case has miserably failed to prove the offence.

3. Detection in this case was made by the PW2 (the Sub Inspector). PW1 is a Police Constable but in this case he attested the Ext. P1 Mahazar as an independent witness. He supported the Sub Inspector on all material particulars. Seizure of six packets carried by the accused in a plastic cover is proved by the evidence of PW1 and PW2. But it stands not proved properly and legally, what exactly is the liquid contained in the six packets carried by the accused. The detecting Officer has no case that he had collected any sample on the spot. PW1 has also no case that the Sub Inspector had collected any sample from the six packets seized by the Sub

Inspector. MO.I is said to be the cover which contained the liquid taken as sample. But the Ext. P3 report shows that what the analyst received in the laboratory was a bottle containing some liquid, and this liquid was identified as arrack on examination. There is no evidence to connect the accused with this liquid. There is also no proper and satisfactory evidence to show that all the six packets were exactly identical and contained the very same material. It is not known whether there was any writing on the packets, and the prosecution has no case that all the six packets were identical in nature or appearance. The detecting Officer does not say anything on these aspects in evidence. It is not known who collected the sample analysed in the laboratory by the analyst. It is also not known how the liquid contained in a packet happened to be received in the laboratory in a bottle. Thus there is absolutely no evidence in this case to prove that the liquid analysed in the laboratory was in fact the liquid seized from the hands of the accused by the Sub Inspector. In the absence of any sort of evidence proving the every material aspect, that the Sub Inspector had collected any sample from the liquid seized from the hands of the accused, the

prosecution cannot be allowed to use the Ext. P3 report against the accused or to prove his guilt. In the absence of any evidence connecting the accused with the liquid examined in the laboratory and identified as liquor, the accused cannot be found guilty. Thus I find that the prosecution has miserably failed in this case to prove the offence alleged against the accused. This court is quite unhappy with the way in which the Sub Inspector dealt with the case and proceeded for prosecution.

In the result, this appeal is allowed. The appellant herein is found not guilty of the offence under Section 55(a) of the Kerala Abkari Act, and he is accordingly acquitted the said offence under Section 386 b (i) Cr.P.C. Accordingly, the conviction and sentence against the appellant under Section 55(a) of the Kerala Abkari Act in S.C 114 of 2001 of the Court of Session, Thiruvananthapuram will stand reversed. The accused/appellant will stand released from prosecution, and the bail bond, if any, executed by him will stand discharged.

Sd/-

P.UBAID,
JUDGE