

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

CRL.A.No. 706 of 2005 ()

**AGAINST THE JUDGMENT IN SC 87/2001 of ADDL. SESSIONS COURT (ADHOC)-1,
KOLLAM DATED 19-03-2005**

APPELLANT:

**RADHAMANIAMMA,
D/O.GOURI AMMA,
NERIYAMPALLYTHARAYIL,
MOMANA MURI, OACHIRA VILLAGE.**

**BY ADVS.SRI.S.V.BALAKRISHNA IYER (SR.)
SRI.K.JAYAKUMAR
SRI.HARISH R. MENON
SRI.R.SURAJ KUMAR**

RESPONDENT:

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

BY PUBLIC PROSECUTOR SRI.GITHESH R.

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl. A. No.706 of 2005

Dated this the 19th day of June, 2015

JUDGMENT

This appeal is preferred against the judgment in S.C.87/2001 of the Additional Sessions Judge (Adhoc) Court - I, Kollam for offence punishable under Section 55 (a) of the Abkari Act. The appellant was convicted under Section 55(a) of the Abkari Act and sentenced to undergo rigorous imprisonment for a term of 1 year and fine of Rupees One lakh, in default of payment of fine, simple imprisonment for three months.

2. The prosecution allegation was that on 15.06.99 at 8.50 pm, the appellant was found in possession of 1.5 litres of spirit in her court-yard, Mariyuampally Tharayil Veedu, Memanam Muri, Oachira Village. The Sub Inspector of Police, Oachira arrested her and seized the contraband articles and reaching at the Police Station, registered crime 127/99 and after completing investigation, laid charge before Judicial First Class Magistrate Court, Karunagappally. The case was

subsequently committed to Sessions Court for trial and disposal.

3. In the trial court, prosecution examined PW1 to PW4 and marked Ext.P1 to P4 and admitted MO1 and MO2 as material objects. The incriminating circumstances brought out in evidence were denied by the appellant while questioning her. She was also heard under Section 232 Cr.P.C. After that the appellant was called upon to enter on her defence evidence. She did not adduce any defence evidence. The trial court after hearing both the sides convicted the appellant.

4. The learned counsel appearing for the appellant contented that there is inordinate delay in forwarding the seized article before court. There was no request for forwarding the seized article to the chemical examiner's lab. There is no independent corroboration to the alleged seizure. The legal infirmities committed by the detecting officer shows that the appellant is entitled to get the benefit of doubt.

5. The learned Public Prosecutor submitted that the seized articles were produced before court by preparing a property list. But he admitted that there was no forwarding note and the articles were produced before court only after expiry of one month.

6. In this context, I have considered the evidence in this case. According to PW4, while he was conducting patrol duty, he got reliable information about the sale of spirit in the house of the appellant. Accordingly, he arrived at the place of occurrence and seized MO1 and MO2 after preparing Ext.P1 mahazar. Ext.P2 is the FIR and it was produced before court as per Ext.P3 property list. 150 ml was taken as sample and obtained Ext.P4 chemical examination report. But no forwarding note has been prepared for sending the article to the chemical examiner's lab. This Court in **Joseph V. State of Kerala 2009(4) KHC 537** held that:

"No request or forwarding note either produced or marked to indicate that a request was made to the Magistrate to send the sample bottle to the chemical examiner for analysis. In the absence of any forwarding note or requisition,

and in the absence of any explanation as to how the Magistrate forwarded sample to the chemical examiner, evidence adduced by the prosecution in that regard cannot be relied upon”

7. The inordinate delay in producing the property before court was not explained by PW4. No documents were shown to prove that the properties including the sample bottle reached before court with its seal intact. There is no reliable evidence to show that the seized articles were entrusted/ kept in the safe custody of the Police Station and forwarded to the Magistrate as per law.

8. In **Ravi V. State of Kerala 2011 (3) KLT 353**, it is held that:

“If so, it cannot be assumed that the property was in the safe custody of PW4 until their production before Court after 16 days. There is the possibility that the properties would have been tampered with. The prosecution, in a case of this nature can succeed only if it is shown that the contraband liquor which was allegedly seized from the accused ultimately reached the hands of the Chemical Examiner by charge of hands in a

tamper-proof condition.”

9. If the delay in the production of the properties were not properly explained by the detecting officer, appellant is entitled to get the benefit of doubt. According to PW4, he seized the article on 15.06.99, but as per Ext.P3 it was produced before Judicial Magistrate Court only on 15.7.99, This delay was not properly explained by the prosecution.

10. In the light of above evidence, I have verified, whether there is any independent corroboration to the alleged seizure. PW1 and PW2 are the independent witnesses. They admitted the signature in P1 mahazar. But they denied the alleged seizure. The seizure was after sunset at 8.00 pm, the presence of independent witnesses are necessary to prove the seizure. When there is no independent corroboration to the alleged story, which will create doubt in the credibility of the seizure. The trial court failed to appreciate that position and convicted the appellant.

11. Analyzing the totality of the evidence, it is found

that the prosecution apparently failed to prove the case beyond reasonable doubt and appellant is entitled to get the benefit of doubt. The conviction and sentence passed by the trial court under Section 55(a) of the Abkari Act is set aside and the appellant is set at liberty.

This appeal is allowed.

STK

Sd/-
P.D. RAJAN,
JUDGE

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P.A. TO JUDGE