

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

CRL.A.No. 54 of 2008 ()

**AGAINST THE JUDGMENT IN SC 518/2002 OF ADDITIONAL SESSIONS JUDGE
(ABKARI ACT CASES), KOTTARAKKARA DATED 10-12-2007**

APPELLANT/ACCUSED:

**MOHANAN, S/O. KRISHNAN NAIR,
AMBILIBHAVANAM, ERUMPANANGADU, EZHUKONE
KOTTARAKKARA.**

**BY ADVS.SRI.BABY THOMAS
SRI.GIGIMON ISSAC**

RESPONDENT/COMPLAINANT:

**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 23-02-2015,
ALONG WITH CRL.A. 155/2008, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

shg/

K. ABRAHAM MATHEW, J.

Crl.A.Nos.54 & 155 of 2008

Dated this the 23rd day of February, 2015

J U D G M E N T

The appellant in criminal appeal No.155/2008 was the first accused and the appellant in the other case the second accused in Sessions Case No.518/2002 on the file of the Additional Sessions Judge (Abkari Act Cases), Kottarakkara. The accusation was that at about 2.30 a.m. on 16.1.2000 they were found to be in possession of 9 litres of Indian made foreign liquor, which was intended for sale. They were charged with having committed the offences under Sections 55 (a) and (i) of the Abkari Act. The learned Sessions Judge found both of them guilty of the offence under Section 55 (a) and not guilty under Section 55 (i) of Abkari Act. Each of them has been sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1 lakh with a default clause.

2. Heard the learned counsel for the appellants and the learned Public Prosecutor.

3. PW3 was a Police Constable and PW4 Sub Inspector of Police attached to Ezhukone police station in January 2000. The prosecution case is that in the course of their patrol duty at about 2.30 am on 16.1.2000, on a public road, they found the appellants standing near the house of one Kunjappan; the first accused had a cardboard box on his head; the other accused was standing close to him; the box was opened; there were 12 bottles of XXX rum; two bottles were opened and sample was taken from both of them.

4. The versions given by PW3 and PW4 are different. PW4 Sub Inspector of Police stated that the first accused who was found carrying a cardboard box on his head and he (PW4) asked him to open the cardboard box; the contents was found to be Indian made foreign liquor. On the contrary, the evidence given by PW3 is that on their being asked about the contents of the box the appellants attempted to run away. PW4 S.I. of Police does not have such a case.

5. PW1 and PW2 are the attesting witnesses in Ext.P1 mahazar prepared for the seizure. Both of them deposed that they put their signatures at the police station. PW1 went to the police station to pay a fine of Rs.150/- which was imposed on him by the police for not wearing uniform when he was driving his auto rickshaw. It came out in the evidence of PW2 that he was a driver of a jeep and the police used to hire it. He also used to bail out accused from police station.

6. Neither PW3 nor PW4 has deposed how PW1 or PW2 happened to be at the place of occurrence. There is no whisper in their evidence about the presence of those two witnesses. It is in this context the evidence of PW1 and PW2 that they signed Ext.P1 mahazar at the police station assumes significance. I find no reason to reject their evidence as false.

7. Though PW4 S.I. of Police testified that the seized articles were produced before the learned Magistrate concerned on the date of occurrence itself, the endorsement

of the learned Magistrate on Ext.P5 proves that it was produced only on 26.2.2000. The evidence of PW4 appears to be false. There is no explanation for the delay in producing the articles before the learned Magistrate. The delay is very relevant because in the mahazar there is no mention how the samples were packed or sealed.

8. Only the contents of two bottles, each having the capacity of 750 ml. was taken as sample and forwarded for chemical analysis. At best it would prove that the contents of two bottles was Indian made foreign liquor. That is not sufficient for the prosecution to prove that the appellants committed the offence under Section 55 (a) of the Abkari Act. It is not in dispute that the total quantity of the two bottles 1,500 ml., did not exceed the permitted quantity.

9. In any view of the matter the prosecution case that the appellants committed the offence under Section 55(a) of Abkari Act cannot be said to have been proved beyond reasonable doubt. The learned Sessions Judge went wrong in convicting them. They are entitled to be

acquitted.

In the result, these appeals are allowed. The conviction of the appellants and the order of sentence imposed on them are set aside. The appellants are acquitted of the said offence. If the fine has been paid, it shall be refunded to them.

Sd/-

**K. ABRAHAM MATHEW
JUDGE**

//True copy//

P.A. TO JUDGE

shg/