

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

CRL.A.No. 715 of 2005 ( )

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AGAINST THE JUDGMENT IN SC 24/2000 of ADDL. DISTRICT COURT (ADHOC)-I,  
KOLLAM DATED 11-04-2005

APPELLANT(S)/ACCUSED:

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SAIMON S/O. JOSEPH,  
SINNAS PURAYIDATHIL, KULANGARABHAGAM MURI  
CHAVARA VILLAGE.

BY ADV. SRI.C.RAJENDRAN

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

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STATE OF KERALA, REPRESENTED  
BY THE SUB INSPECTOR OF POLICE  
KOLLAM EAST POLICE STATION (CRIME NO.926/98)  
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA  
ERNAKULAM.

R1 BY ADV. PUBLIC PROSECUTOR SMT.LALIZA T.Y

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON  
20-05-2015, THE COURT ON 01-06-2015 DELIVERED THE FOLLOWING:

**P.UBAID, J.**  
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**Crl.A No.715 of 2005**  
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**Dated this the 1<sup>st</sup> June, 2015**

**J U D G M E N T**

The appellant herein challenges the conviction and sentence under Section 55(a) of the Kerala Abkari Act. He faced prosecution in S.C No.34 of 2000 before the Court of Session, Kollam on the allegation that on 11.9.1998, he was found possessing and transporting a total quantity of 12.750 litres of Indian made foreign liquor contained in 13 bottles of 750 ml capacity and 8 bottles of 375 ml capacity in the Autorickshaw No.KL-2G 396. He was arrested by the Sub Inspector of Police, Kollam East and the quantity of liquor was seized as per mahazar. The accused/appellant pleaded not guilty to the charge framed against him under Section 55 (a) of the Kerala Abkari Act by the learned Additional Sessions Judge (Adhoc), Kollam.

2. The prosecution examined three witnesses in the trial court and marked Exts.P1 to P4 and also M.O1 and M.OII properties. Of the two items of properties, MO1 series are the five bottles containing sample liquor taken,

according to the detecting officer, from the seized quantity of liquor, and MOII series are the other bottles seized as per mahazar. When examined under Section 313 of the Code of Criminal Procedure, the accused denied the incriminating circumstances and maintained a stand of total denial. On an appreciation of the evidence adduced by the prosecution, the learned trial Judge found him guilty under Section 55 (a) of the Abkari Act. On conviction thereunder, he was sentenced to undergo rigorous imprisonment for four years and also to pay a fine of ₹ 1,00,000/- (Rupees One lakh only). Aggrieved by the conviction and sentence, the accused has now come up in appeal.

2. When the appeal came up for hearing, the learned counsel for the appellant submitted that the whole prosecution case is tainted with suspicion regarding the process of detection and the collection of sample from the total quantity of liquor, and that the prosecution does not have any evidence to show that any sample was collected from the liquid seized from the hands of the accused, or that the samples analysed in the laboratory, are the samples taken from the quantity of liquid

seized from the accused. The learned counsel also argued seriously on the delay in producing the properties in court. The delay was stressed as very important by the learned counsel on the ground of definite possibility of tampering, in view of the fact that the detection mahazar does not show that any sample was collected by the Detecting Officer.

3. Of the three witnesses examined by the prosecution, PW3 is the Sub Inspector, PW2 is the Police Constable, who accompanied PW2, and PW1 is an independent witness. PW1 turned hostile to the prosecution during trial. He did not support the prosecution. However, he admitted his signature in the mahazar. PW3 and PW2 gave definite evidence regarding seizure of some quantity of liquor from the hands of the accused. The Sub Inspector also gave evidence that sample was taken in five bottles and that the sample bottles, and also the other bottles, were sealed according to law. The defence is mainly on this aspect.

4. The offence was detected by PW3 on 11.9.1998. But the properties including the residue and the samples were produced in court only on 8.1.1999. This Court has in so many

decisions held that in cases of delay in producing the properties, the possibility of tampering will have to be very much found in favour of the accused, when such delay is not properly and satisfactorily explained by the prosecution. In this case, no question was asked to PW3 or PW2 regarding the long delay of about three months in producing the properties in court. The Detecting Officer did not explain the delay, and he did not give evidence that the properties were in his safe custody from 11.9.1998 to 8.1.1999. In the absence of any such evidence explaining the delay or proving safe custody till production, the accused in this case will have to be given the benefit of the decisions of this Court, that the truth of the prosecution case including safe custody of properties will have to be seriously doubted by the court.

5. It is pertinent to note that Ext.P1 detection mahazar prepared by PW2 on the spot does not show that any sample was taken from the liquor by PW3. There is absolutely no mention of any such procedure in the detection mahazar. Only in evidence, PW3 and PW2 casually stated about sampling. But even these statements do not contain the essential details of

the sampling process. Anyway, it came out during trial, from the evidence of the detecting officer himself, that many of the bottles in MO1 and MOII series do not carry any label or seal. Much probe is not required to find that the properties stand tampered with. The prosecution has no explanation why many of the sample bottles in MO1 series or the other bottles in MOII series do not carry the labels or the seals now. In fact, the evidence of the PW3 is not satisfactory at all to show that labels were properly affixed on the bottles, according to law, or that any particular seal was affixed on the bottles by PW3.

6. The prosecution relies on Ext.P4 report of chemical analysis. The detection mahazar does not show that any sample was collected, and even the properties in court do not carry any seal or label. Thus, there is nothing to show that any sample was collected from the liquor seized from the hands of the accused, or that the liquor analysed in the laboratory was in fact taken from the total quantity of liquor allegedly seized from the possession of the accused. In the absence of any such connecting evidence, the prosecution cannot in any manner rely on Ext.P4 report of analysis.

7. There are materials to suggest that there was some sort of tampering with the properties at some stage, or that the prosecution introduced a case of sampling much later when the learned Public Prosecutor or the Detecting Officer found serious infirmity, that the detection mahazar does not show that any sample was taken. I find that the whole prosecution case is tainted with serious doubt, the benefit of which must be given to the accused. In view of the definite materials showing possibility of tampering with the properties produced in court after about three months, the court cannot believe the prosecution case. The accused cannot be found guilty under Section 63 of the Kerala Abkari Act for having possessed excess quantity of foreign liquor when the very identity of the liquor bottles produced in court is really doubtful in the absence of labels and seals on the bottles. I find that the accused in this case is entitled for an acquittal on the benefit of doubt.

In the result, this appeal is allowed. The conviction and sentence against the appellant in S.C No.24 of 2000 of the Court of Session, Kollam will stand set aside. Accordingly, the

appellant/accused will stand acquitted of the offence under Section 55 (a) of the Kerala Abkari Act in appeal, under Section 386 (b) (i) of the Code of Criminal Procedure. The bail bond executed by the accused/appellant will stand discharged.

**Sd/-  
P.UBAID  
JUDGE**

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P.S to Judge