

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

CRL.A.No. 878 of 2006 (A)

AGAINST THE JUDGMENT IN SC 24/2001 of ADDL.SESSN.COURT (ADHOC-II)
KASARAGODE.

APPELLANT(S)/ACCUSED:

K. NARAYANAN, AGED 46 YEARS,
S/O. KOTTAN, MOOLAKANDAM CHAKLIYA COLONY,
AJANUR VILLAGE.

BY ADV. SRI.M.SANTHOSHKUMAR

RESPONDENT(S)/COMPLAINANTS:

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1. CIRCLE INSPECTOR OF EXCISE,
HOSDURG IN CR.NO.13/99.
 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. C.K. JAYAKUMAR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
11-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 878 of 2006

Dated this the 11th day of September, 2015.

JUDGMENT

The accused was prosecuted for the offence punishable under Section 55(g) of the Kerala Abkari Act and was found guilty of the same. He was therefore convicted and sentenced to suffer rigorous imprisonment for one year and to to pay fine of Rs.1,00,000/–, in default, to undergo rigorous imprisonment for three months.

2. The incident in this case occurred on 12.7.1999 at 3.30 p.m. On that day, while P.Ws. 1 and 2 were on patrol duty, they found the accused moving in his compound towards the coconut tree with a plastic pot in his hand. Feeling suspicious, he was intercepted and found a can having capacity of 15 litres which contained 10 litres of wash. He was arrested as per Ext.P1 arrest memo prepared by P.W.1. Sample was taken and it was sealed and label was affixed containing the signatures of the accused and the officer

concerned. Ext.P2 mahazar was prepared at the spot. P.W.1 returned to the office along with the accused and the articles and the accused was produced before the Excise Inspector, C.W.6. C.W.6 is no more. C.W.6 prepared Ext.P3 occurrence report and he prepared the property list, namely Ext.P4, and the sample collected was forwarded for chemical analysis as per Ext.P5 forwarding note. Ext.P6 is the chemical analysis report. C.W.6 conducted investigation in the case and laid final charge before court.

3. Cognizance of the offence was taken by JFCM-I, Hosdurg which, on finding that the offence is exclusively triable by a court of Sessions, committed the case to Sessions Court, Kasaragode. The said court made over the case to Assistant Sessions Court, Hosdurg for trial and disposal.

4. The latter court, on receipt of records and on appearance of the accused, framed charge for the offence punishable under Section 55(g) of the Abkari Act. To the

charge, the accused pleaded not guilty and claimed to be tried. The prosecution, therefore, had P.Ws.1 to 4 examined and had Exts.P1 to P8 marked. M.O.1 was identified and marked. After the close of the prosecution evidence, the accused was questioned under Section 313 Cr.P.C. He denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent. Finding that the accused could not be acquitted under Section 232 Cr.P.C., he was asked to enter on his defence. He chose to adduce no evidence.

5. The court below found the evidence of P.Ws. 1 and 2 to be convincing enough and also that contemporaneous document, namely, Ext.P3 supported the version given by P.Ws.1 and 2 and found the accused guilty of the offence. Conviction and sentence as already mentioned followed. The said conviction and sentence are assailed in this appeal.

6. The main argument is regarding the place of occurrence which, according to the appellant, differs going by the evidence of P.Ws.1 and 2. It is contended that going by the evidence of P.W.1, it is 200 meters away from the place where he had parked his jeep. According to P.W.2, it is only 50 meters. However Ext.P8 plan prepared by P.W.3 would show that it is only 10 meters away from the National Highway. This material aspect has been lost sight of by the court below. It is also urged that M.O.1 did not contain labels which P.W.1 claims to have affixed on the same. Seizure of M.O.1 is not seen mentioned in Ext.P2 mahazar and there is no authenticity for M.O.1. It is also contended that the statement of P.W.1 was taken long after the incident and that also adds to the infirmity to the prosecution case.

7. P.Ws.1 and 2 are Preventive Officers attached to Excise Department who along with other persons detected the

offence. Both of them gave uniform and consistent version of the incident. Both of them say that the detection was on 12.7.1999 at about 3.30 p.m. According to them, while they were on patrol duty, they happened to see the accused carrying something in his hand. He was intercepted and on examination, it was found that the pot in his possession contained 10 litres of wash. P.W.1 speaks about the arrest of the accused and preparation of mahazar at the spot. He also speaks about the taking of sample of the material. The evidence of P.W.1 gets ample support from the evidence of P.W.2 also. P.W.1 stated that after detection, preparation of mahazar etc., the article and the accused were produced before the then Excise Inspector, Krishnan, who is no more. P.W.1 also speaks about the acts done by C.W.6 the officer who prepared the cognizance report and conducted the investigation in the case. A reading of the evidence of P.Ws. 1 and 2 would show that there is no inconsistency and infirmity

in the evidence of officers and they synchronize well enough. Of course, there is a slight contradiction regarding the distance as spoken to by P.Ws.1 and 2.

8. It is true that the independent witness examined as P.W.4 has turned hostile to the prosecution case. But it is well settled by now that merely because independent witness has turned hostile, it cannot be said that the prosecution case has to be discarded. The court below found that the evidence of the Excise Officers are consistent and uniform and corroborate each other supported by contemporaneous documents. The mere fact that the independent witnesses turned hostile does not mean that there is no merit in the prosecution case. There is no rule that the evidence of police officers must be looked upon with suspicion. In this case, it is not shown that their evidence suffers from any infirmity or they are interested in the matter.

9. The main contention taken is regarding the

distance spoken to by P.Ws. 1 and 2 and shown in Ext.P8 plan prepared by P.W.3. P.W.1 would say that he had walked 200 meters after parking the vehicle. P.W.2 says that it is 50 meters. P.W.3, the Village Officer, who prepared the site plan only say that the place is about 10 meters away from the National Highway. Even assuming that there is some contradiction in this regard, it is seen that P.Ws.1 and 2 gave consistent version to the effect that they had seen the accused moving away from his house towards the coconut tree in his compound. Whether it is 50 meters or 200 meters is of little consequence. Those are only approximate distance.

10. It may be noticed that Ext.P3 is a contemporaneous document prepared by P.W.3. It is seen that seizure of M.O.1 is not specifically mentioned. However, it is stated that all the articles which were found at the place were taken by the Excise Officers. It is significant to notice that P.W.1 produced all the articles before the Excise Inspector on

the very same day itself. Merely because the label on M.O.1 is found to have been tampered with does not lead to the conclusion that the article produced is not the one seized from the spot by P.W.1.

11. Ext.P6 report of the chemical analyst shows that the seized article contained ethyl alcohol.

12. It is true that P.W.4, independent witness, has turned hostile, but his evidence was disbelieved by the court below. There is no reason to take a different view.

13. The court below has analysed the evidence in considerable detail and found the accused guilty of the offence punishable under Section 55(g) of the Kerala Abkari Act. No grounds are made out to interfere with the finding of the court below. There is no error in the appreciation of evidence by the court below. The result is that the finding of the court below that the accused is guilty of the offence does not call for interference.

14. Coming to the sentence awarded, it is felt that the court below was extremely reasonable in this regard and sentence awarded is to undergo rigorous imprisonment for one year and and to pay fine of Rs.1,00,000/- with default sentence for three months. There is no reason to come to the conclusion that the sentence awarded is excess or disproportionate to the offence committed by the accused.

This appeal is without merits and it is accordingly dismissed confirming the conviction and sentence awarded by the trial court .

P. BHAVADASAN,
JUDGE

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