

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

CRL.A.No.471 of 2007

AGAINST THE JUDGMENT IN SC 801/2005 of ADDITIONAL SESSIONS
COURT FAST TRACK No.II, PALAKKAD DATED 15-02-2007

APPELLANT/ACCUSED:

PAZHANISWAMY, S/O. SUBRAMANIAN,
ROHINI NIVAS, SHOLAYUR, MANNARKKAD,
PALAKKAD.

BY ADV. SRI.VINOD KUMAR.C

RESPONDENT/COMPLAINANT:

STATE OF KERALA REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY SMT. LILLY LESLI, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
01-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.471 OF 2007

Dated this the 1st day of October, 2015.

J U D G M E N T

The accused was prosecuted for the offence punishable under Section 55(a) read with Section 8(2) of Abkari Act. He was found guilty and was therefore convicted and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.1 lakh with default clause of simple imprisonment for three months. Set off as per law was allowed.

2. The prosecution case is that on 19.06.2003 in the afternoon, while PW2, Assistant Sub Inspector of Police, was on patrol duty along with PW3, Head Constable and other officers, they received a reliable information that beneath a banyan tree attached to Vinayaka temple, accused is vending illicit arrack. They went to the spot and found the accused in possession of a white can and a glass and seeing the police officers, he tried to escape from the place. He was intercepted and on examination of the can having a capacity of 5 litres, it was found to contain

3 litres of arrack. PW2 would say that he took sample from the said article, sealed and labeled the same. He obtained the signature of the accused, his and the witnesses. The balance article was also sealed and labeled. He returned to the Police Station along with the contraband article and the accused and registered crime against the accused. Accused was arrested as per Ext.P2 arrest memo. First Information Report prepared by him is Ext.P3. He says that at the time when seizure was made, he was the Station House Officer. He questioned the witnesses and prepared scene mahazar Ext.P4. He prepared the property list namely, Ext.P5. PW4 completed the investigation and laid charge before court after obtaining Ext.P7 chemical analysis report.

3. The court before which final report was laid took cognizance of the offence and finding that the offence is exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Palakkad under Section 209 Cr.P.C. The said court made over the case to Additional Sessions Court Fast Track-II, Palakkad for trial and disposal. The latter court, on

receipt of records and on appearance of the accused, framed charge for the offence punishable under Section 55(a) of Abkari Act, to which, accused pleaded not guilty and claimed to be tried.

4. The prosecution, therefore, had PWs 1 to 6 examined and Exts.P1 to P7 marked. M.O.s 1 and 2 were got identified and marked.

5. After the close of the prosecution evidence, 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.

6. 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.

7. The court below impressed by the evidence of PWs 2 and 3 and also the contemporaneous document namely, Ext.P1 and found that the prosecution has succeeded in establishing the case against the accused. Finding that the accused is guilty, convicted and sentenced him as already mentioned.

8. Assailing the conviction and sentence, learned counsel

appearing for the appellant contended that a major part of the investigation was conducted by PW2 who is only an Assistant Sub Inspector who was incompetent to either detect or investigate the offence. This being the position, entire proceedings is vitiated. Further, it is pointed out that even though the incident occurred on 19.06.2003, articles were produced before court only on 25.07.2003. The delay remains unexplained. On these two grounds, according to the learned counsel, conviction is liable to be interfered with.

9. Learned Public Prosecutor, on the other hand, contended that investigation was completed by PW4 who was a competent officer and charge has been laid by him. The evidence of PWs 2 and 3 taken along with Ext.P1 is sufficient to warrant conviction.

10. Going by the Government notification then in force, Sub Inspector of Police or officers above the said rank alone are competent to detect and investigate the case under the Abkari Act. This Court had occasion to consider detection and portion of investigation done by Assistant Sub Inspector of Police and in such cases it was held that it was incompetent for an Assistant

Sub Inspector to detect an offence and to conduct investigation in the matter. If any authority is required, it is furnished by the decision in **Haridas** vs. **State of Kerala** (2015 (1) KLT 958).

11. Apart from the above fact, detection of the offence was on 19.06.2003 and the article was produced in court only on 25.07.2003. The reason given is that due to the nature of the road it was difficult to reach the court. Suffice to say that the reason given is unjustifiable and bad route is not a ground to delay production of article by more than one month. On this ground also, the prosecution has to fail.

For the above reasons, this appeal is allowed. Conviction and sentence passed by the court below are set aside and the accused is acquitted of the charges levelled against him. His bail bond shall stand cancelled and he is set at liberty.

Sd/-

P.BHAVADASAN
JUDGE

smp

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P.A to Judge.