

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

CRL.A.No.939 of 2006

AGAINST THE JUDGMENT IN SC 95/2003 of ADDL.SESIONS COURT
(ADHOC-I), KASARAGOD DATED 20-03-2006

APPELLANT/ACCUSED:

E.C. SCARIA, AGED 41 YEARS,
S/O. CHERIYAN, ELANHIMATTATHIL VEEDU,
CHITTARIKKAL VILLAGE, KASARAGOD.

BY ADVS.SRI.M.SASINDRAN
SRI.M.B.PRAJITH

RESPONDENT/COMPLAINANT:

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

BY SMT. S. HYMA, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
22-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.939 OF 2006

Dated this the 22nd day of December, 2015.

J U D G M E N T

The accused was prosecuted for the offence punishable under Section 55(a) of Abkari Act. He was found guilty and was therefore convicted and sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.1 lakh with default clause of rigorous imprisonment for one month. Set off as per law was allowed.

2. The incident in this case occurred on 03.11.2000. On that day, PW6 who was the Assistant Sub Inspector of Police attached to Chittarikkal Police Station had gone for routine patrol duty along with other officers. When they reached near 'Sakthi Tyres', they happened to see the accused coming along with a bag. Feeling suspicious, he was intercepted and the bag was seized. It was found that the bag contained 48 bottles of 375ml capacity containing Karnataka made foreign liquor. Two of the bottles were taken as sample and they were sealed and labeled.

The accused was arrested and Ext.P2 seizure mahazar was prepared. He returned to the station along with the accused and the contraband articles and as per Ext.P3 First Information Report, registered crime. Ext.P4 is the property list prepared and produced before court. It is interesting to note that properties were produced before court only on 10.11.2000 while detection was on 03.11.2000.

3. Investigation was taken over by PW7. He was the Sub Inspector of Police of Vellarikkundu Police Station. He says that according to the instruction received from the Circle Inspector of Police, he started investigation. He went to the place of occurrence and prepared the scene mahazar Ext.P5. He recorded the statement of witnesses, prepared forwarding note, Ext.P6 for sending the sample for chemical analysis, obtained Ext.P7 report from the laboratory and completed the investigation. The charge was laid by PW3.

4. 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, Kasaragod. The said court made over the case to Additional Sessions Court (Adhoc-I), Kasaragod for trial and disposal. The latter court, on receipt of records and on appearance of accused, framed charge for the offence under Section 55(a) of Abkari Act. To the charge, accused pleaded not guilty and claimed to be tried.

5. The prosecution therefore had PWs 1 to 7 examined and Exts.P1 to P9 marked. M.O.1 and M.O.2 series were got identified and marked.

6. After the close of the prosecution evidence, accused was questioned under Section 313 Cr.P.C wherein he denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent.

7. 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.

8. Presumably, accepting the evidence of PWs 1 and 6 and relying on the contents of Ext.P2 mahazar, court below came to the conclusion that the prosecution has succeeded in establishing

the case against the accused. The court below found the accused guilty and convicted and sentenced him as already mentioned. The said conviction and sentence are assailed in this appeal.

9. Learned counsel appearing for the appellant contended that this appeal will have to succeed on a very short ground. PW6, the detecting officer, was Assistant Sub Inspector of Police who was not an authorised officer or empowered officer at the relevant time going by the notification of 1967 then in force. Further it is stated that PW7, Sub Inspector of Police, who conducted the investigation, had exercised the extra territorial jurisdiction for which he is not competent even assuming he was authorised by the superior officer.

10. Labouring on the first aspect, it is pointed out by the learned counsel for the appellant that the notification of 1967 covers officers of the rank of Sub Inspector of Police and above and not Assistant Sub Inspector of Police. If that be so, any act done by PW6 is invalid in law. It is then contended that PW7 is the Sub Inspector of Vellarikkundu Police Station which falls within another region and has nothing to do in the matter. Even

assuming that he is authorised, he cannot act as Abkari Officer. Learned counsel also pointed out that there are several other infirmities which he could submit. But, if he is entitled to succeed on the above grounds, it is not necessary to submit them.

11. Learned Public Prosecutor has no answer to the above contentions.

12. The position is settled in the the decisions in **Subrahmanian** vs. **State of Kerala** (2010 (2) KLT 470) and in **Narayanankutty** vs. **State of Kerala** (2015 (2) KLT S.N 18).

13. In the decision in **Subrahmanian** vs. **State of Kerala** (2010 (2) KLT 470), it was held as follows:

“13. On a reading of S. 50, it is crystal clear that the court can take cognizance only upon a valid report filed by “competent officer after investigation of the case as provided under S. 50 of the Act”. S.40 deals with procedure on arrest and seizure. S.41 deals with disposal of persons arrested. Going by various provisions of the Act, it can be seen that wide powers are given to “Abkari Officers” and “Abkari Inspectors”. Besides that, S.50 is more particular that, only “report of Abkari Officer” gives jurisdiction to a competent Magistrate and only on such report, the Magistrate can take cognizance. In the present

case, PW1 who was working as an Assistant Excise Inspector was not given powers under the above provisions to effect seizure and investigation. He was also not competent due to absence of conferment of powers under S.50, to file "Report" or complaint. A trial conducted based upon a report of an incompetent officer will render as "*non est.*".....".

14. In the decision in **Narayanankutty vs. State of Kerala** (2015 (2) KLT S.N 18), it was held as follows:

"In the light of the provisions of S.R.O No.321 of 1996 as interpreted by this Court in this ruling (2010 (3) KLT 471), a Sub Inspector of Police authorised to act as Abkari Officer can exercise his jurisdiction only within the territorial limits of his police station. Therefore, PW6, the Sub Inspector of Police, Hemambika Nagar Police Station, had exceeded the limits of his jurisdiction by investigating the case on hand which was within the territorial limits of Kongad Police Station".

15. In the light of the above decisions, the act done by PWs 6 and 7 has no legal basis and the proceedings initiated by them cannot be countenanced. Therefore, the prosecution fails.

For the above reasons, this appeal is allowed. The conviction and sentence passed by the court below for the

offence under Section 55(a) of Abkari Act are set aside and it is held that the accused is not guilty of the offence. He stands 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.