

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

CRL.A.No. 520 of 2007 ()

**AGAINST THE JUDGMENT IN SC 1606/2001 of ADDITIONAL SESSIONS COURT-TRIAL
OF ABKARI ACT CASES, NEYYATTINKARA DATED 12-02-2007**

APPELLANT(S)/ACCUSED:

**MANIYAN, S/O.SADASIVAN, RAJESH BHAVAN,
KALAVOOR DESOM, NEYYATTINKARA TALUK.**

BY ADV. SRI.S.MOHAMMED AL RAFI

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT. LILLY LESLIE

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 520 of 2007

Dated this the 18th day of December, 2015

J U D G M E N T

The accused was prosecuted for the offence punishable under Section 58 of the Abkari Act. He was found guilty. He was therefore convicted and sentenced to suffer rigorous imprisonment for one year and to pay a fine of ₹1 lakh with a default clause of rigorous imprisonment for a further period of three months.

2. The incident in this case occurred on 15.12.1999. On that day, PW3, the Excise Inspector attached to Thirupuram Excise Range and PW2, the Preventive Officer along with others had gone on routine patrol duty. While they were on the route to the Karichal Church, they happened to see the accused coming along the way carrying a 2½ litres can. Seeing the Excise Officers, he tried to retrace his steps. He was intercepted. He was prevented from doing so and the can was seized by the Excise Officers. The contents were identified as arrack by taste and smell.

The accused was arrested on the spot. The can and the contraband articles were sealed and labelled. The signatures of the accused and PW3 were affixed on the label. Ext.P1 mahazar was prepared and the arrest memo is Ext.P2. Thereafter, PW3 and his team of officers along with the accused and the contraband article and the documents went to Thirupuram range Office and handed over the same to the Officer in charge there. PW4 was in charge of the office as on the date on which the crime was detected. He accepted the claim made by PW3 that they handed over the accused, the documents and the contraband articles to the Range Office, Thirupuram. On the basis of those documents, he registered crime as per Ext.P3 occurrence report. Ext.P5 list of properties was prepared by him and he claims to have sent a requisition to the court for taking samples and he obtained Ext.P6 Chemical Analysis Report. PW5 conducted investigation in the case. He recorded statements of witnesses, completed investigation and laid charge before court.

3. The court before which the final report was laid, took cognizance of the offence and finding the offence to be exclusively triable by a Court of Sessions, committed the case to Sessions Court, Thiruvananthapuram under Section 209 of Cr.P.C. after following the necessary procedures. The said court made over the case to Additional Sessions Court for the Trial of Abkari Act Cases, Neyyattinkara, for trial and disposal.

4. The latter court, on receipt of records and appearance of the accused before the said court, framed charge for the offence punishable under Section 58 of the Abkari Act.

5. To the charge the accused pleaded not guilty and claimed to be tried. The prosecution therefore had PWs 1 to 6 examined and had Exts.P1 to P7 marked. MO1 was got identified and marked.

6. After the close of 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.

7. Finding that he 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. The court below, greatly impressed by the evidence of PWs 2 and 3 and also the contents of Ext.P1 mahazar and also having accepted the evidence given by PW6, the Thondi Clerk attached to the court concerned, found the accused guilty. Conviction and sentence followed.

9. The learned counsel appearing for the appellant assails the finding on the ground that there is no sample seal produced so as come to the conclusion that the sample received in the laboratory is the sample sent for chemical analysis. It is also pointed out that no requisition, which is claimed to have been sent to the court, is actually seen produced in the case. Ext.P7, the thondi register does not contain any mention of any sample has been drawn or sent for chemical analysis. The learned counsel accepted that PW6, the Thondi Clerk has been examined and she claimed

that she took the sample. But no order authorizing her to take sample or what is the seal she had used to secure the sample are not available from the evidence. The learned counsel referred to the Chemical Analysis Report, namely, Ext.P6 which makes mention of tallying of seal. It is not discernible from the report that the seal found on the samples received in the laboratory tallied with which seal. PW6 does not say that she had affixed a separate seal on the sample. Therefore, there is no authenticity of the sample that is said to have reached in the chemical laboratory.

10. The learned Public Prosecutor on the other hand tried to sustain the conviction by relying on the evidence of PWs 2 and 3 and the materials relied on by the court below to convict the accused. It is pointed out that it is quite evident that the sample has been taken from court and if that be so, it is difficult to presume that it was done in accordance with law. There is no need to doubt the authenticity of sample, so says the learned Public

Prosecutor. At any rate, the learned Public Prosecutor pointed out that the court below has chosen to accept the evidence in this regard and there is no justification for this Court to interfere with the said finding.

11. After having heard the learned counsel for the appellant and the learned Public Prosecutor and after having given anxious consideration to various aspects, it is difficult to uphold the conviction. It is quite evident that PWs 2 and 3, who are the Detecting Officers, did not take samples at the spot and left it to the mercy of the court to take the samples. Even though PW4 says that he had sent a requisition a court to take the samples, no such requisition is seen marked in the case. PW6 simply says that she had taken the sample as per the orders of the Judicial First Class Magistrate court concerned. But no such order is seen produced and there is no endorsement in Ext.P7, the extract register either to show that the samples had been drawn or that the samples had been handed over to anybody to be sent to the chemical analysis laboratory. As rightly pointed

out by the learned counsel for the appellant, it is by now well settled that sample specimen seal should be provided so as to enable the court to ascertain whether the sample that reaches the chemical analysis laboratory is the true sample or not. If that test is to be applied, certainly, in the case on hand, it fails to meet the required standards.

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

Sd/-
P.BHAVADASAN
JUDGE

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P.A. to Judge