

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

CRL.A.No. 968 of 2006

AGAINST THE JUDGMENT IN SC 93/2001 of ADDL. SESSIONS COURT
(ADHOC)-I, KALPETTA.

APPELLANT(S)/ACCUSED:

N.P.PAULOSE, S/O.PAILY,
AGED 42 YEARS, NADUTHOTTATHIL HOUSE, VIMALANAGAR,
THAVINJAL VILLAGE, MANANTHAVADY TALUK,
WAYANAD DISTRICT.

BY ADV. SRI.N.J.ANTONY

RESPONDENT(S)/STATE:

1. EXCISE INSPECTOR,
MANANTHAVADY RANGE, WAYANAD DISTRICT.

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

BY PUBLIC PROSECUTOR SRI. C.K. JAYAKUMAR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 968 of 2006

Dated this the 9th day of October, 2015.

JUDGMENT

The accused was prosecuted for the offence punishable under Sections 55(a) of the Abkari Act. He was found guilty and therefore convicted and sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.1,00,000/-, in default, to undergo rigorous imprisonment for three months. Set off as per law was allowed.

2. P.W.1 was at the relevant time functioning as Preventive Officer of Excise Range, Mananthavady. On the date of the incident, he along with his co-officers were on patrol duty. At about 10.15 a.m., they reached Tholpetty. They went ahead the checkpoint and a little further away from the checkpoint, they found a person carrying a can in his right hand. When the accused happened to see the excise officers, he became panic and tried to escape. His attempt was effectively prevented. P.W.1 seized 10 plastic bottles each

containing 375 ml. of Indian Made Foreign Liquor. All bottles look same and the contents also look same. On examination, it was found to be foreign liquor. The accused was arrested and sample was taken from the bottle which was opened for examining the contents. The sample so taken was affixed with labels containing the signature of the accused, P.W.1 and witnesses. Ext.P1 seizure mahazar was also prepared. They returned to the office and entrusted the articles and the accused to the Station House Officer. P.W.4 received the articles and the accused produced by P.W.1 and registered crime as per Ext.P3. The accused was produced before the court on the very same day itself. The articles seized and the can were kept and they were produced on the next day before the court. Ext.P4, the property list and the thondi articles were produced before court on the next day. A forwarding note was prepared on the basis of which the sample was sent for chemical analysis and Ext.P7 was obtained. He recorded

statements of witnesses, completed investigation and laid charge before court.

3. The court, before which final report was laid took cognizance of the offence. Finding that the case is one exclusively triable by a court of Sessions, the said court committed the case to Sessions Court, Kalpetta under Section 209 Cr.P.C. after following the necessary procedures. The said court made over the case to Additional Sessions Court (Adhoc)-I, Kalpetta for trial and disposal.

4. The latter court, on receipt of records and on appearance of the accused framed charge for the offence already made mention of. 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 P7 marked. M.Os. 1 and 2 were got identified and marked. After the close of the prosecution evidence, the accused was questioned under Section 313 Cr.P.C., in which he denied all the

incriminating circumstances brought out in evidence against him and maintained that he is innocent. 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.

5. Presumably based on the evidence of P.Ws. 1, 2 and 4 and also the contemporaneous document, the court below was impressed with the prosecution case and accordingly the accused was found guilty and convicted and sentenced as already mentioned. The said conviction and sentence are assailed in this appeal.

6. Assailing the conviction and sentence, learned counsel for the appellant contended that there is no evidence regarding the fact that which of the properties were produced before the court on the first occasion and which were the properties produced at a later stage. According to the learned counsel, it is seen that the property produced before the court on the first occasion had been returned and there is nothing to

show that the same property was subsequently brought back to court. Learned counsel also pointed out that there is no independent evidence to show that the accused had committed the offence.

7. Learned Public Prosecutor on the other hand contended that the evidence of P.Ws. 1, 2 and 4 are sufficient to show the complicity of the accused. All the procedures were duly complied with and the chemical analysis report shows that the contraband article contained ethyl alcohol.

8. After having given anxious consideration to the contentions raised by both sides, and having perused the records, it is felt that the learned Public Prosecutor is justified in his submission that no interference is called for.

9. P.W.1 is the Preventive Officer. He in no less terms stated that on 2.7.1999 he was on patrol duty along with the excise party. On the way the accused was seen coming along with a blue plastic cover with something in it.

He was intercepted and the cover was seized. The cover found to contain 10 plastic bottles, each containing 375 ml. liquor. By taste and smell it was found found to be illicit liquor. P.W.1 speaks about having taken samples, sealed and labelled the same. He also says that labels were affixed on the other bottles and prepared Ext.P1 mahazar. With regard to sampling, labelling etc., P.W.1 gets sufficient support from the evidence of P.W.2 who had accompanied him on patrol duty. P.Ws. 1 and 2 therefore gave a uniform and consistent version regarding the incident.

10. Learned counsel appearing for the appellant also contended that in the forwarding list which is Ext.P5 the article shown is 350 ml. of arrack in sealed bottle. Taking aid of that entry, it was contended that what was sent for chemical examination was arrack and not IMFL alleged to have been seized from the possession of the accused. This would go fatal to the prosecution.

11. Though the argument may look attractive, it is to be noted that the appellant has no case that the sample sent to the Laboratory is not the sample which was taken at the spot by P.W.1 in the presence of the accused, witnesses and police officers. Merely because by an inadvertent mistake it is mentioned as arrack, that cannot be given undue importance to acquit the accused. It is true that no independent witness has been examined by the prosecution. There is nothing to doubt the version given by P.Ws. 1 and 2 regarding the detection and their evidence is sufficiently supported by the contemporaneous document, prompt production of the documents and the accused before court gives further credit to the prosecution version. The court below appreciated the evidence in the proper perspective and came to the conclusion that the prosecution has succeeded in establishing that the accused is guilty of the charges levelled against him.

12. What now remains to be considered is the question regarding sentence. Learned counsel for the appellant contended that considering the quantity and the nature of article seized, the sentence seems to be on the high side and some leniency may be shown in this regard.

13. On an anxious consideration of the available materials, it is felt that there is some justification in the complaint raised by the learned counsel for the appellant. Considering the quantity and the nature of article seized , it is felt that some leniency can be shown.

In the result, while confirming the conviction of the accused for the offence punishable under Section 55(a) of the Abkari Act, the sentence awarded is set aside and the accused is sentenced to undergo rigorous imprisonment for three months and to pay fine of Rs.1,00,000/–, in default, to undergo simple imprisonment for two months. Set off as per law is allowed.

With the above modification, this appeal is disposed
of.

P. BHAVADASAN,
JUDGE

sb.