

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

CRL.A.No. 971 of 2006 ()

AGAINST THE JUDGMENT IN SC 15/2005 of ADDITIONAL SESSIONS COURT (ADHOC-I), THODUPUZZHA DATED 20-04-2006

CP 38/2004 OF JUDICIAL FIRST CLASS MAGISTRATE, KATTAPPANA

APPELLANT(S)/ACCUSED NO.1::

**ASOKAN @ ASOK KUMAR, S/O.RAJU THEVAR,
HOUSE NO.XIII/244, UPPUTHARA PANCHAYAT, -DO- VILLAGE.**

**BY ADVS.SRI.C.M.TOMY
SRI.MATHEW SKARIA**

RESPONDENT(S)/COMPLAINANT::

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

BY PUBLIC PROSECUTOR SMT. S. HYMA

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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P.BHAVADASAN, J.

Crl.A. No. 971 of 2006

Dated this the 17th day of December, 2015

J U D G M E N T

Two persons were prosecuted for the offences punishable under Sections 55(a) and 8(1) & (2) of the Abkari Act. Among them, the first accused alone was found guilty and A2 was acquitted of all charges. A1 was convicted for the offences alleged against him and sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹1 lakh with a default clause of simple imprisonment for a further period of six months.

2. The prosecution case is that on 10.03.2002, while PWs 2, 4 and others were on routine patrol duty, they received reliable information that a jeep bearing registration No. KL5C-3807 was being used for transporting arrack. The Police jeep was parked near Alady estate gate. They found a jeep coming at a high speed and signalled it to stop. It did not stop and went ahead. It was chased and ultimately the

jeep hit a tree and came to a halt. The driver and a person sitting on the rear side of the jeep escaped. When the jeep was examined, it was found to contain a 10 litres can with liquid in it. They identified it as arrack by smell and taste. Two samples were taken by PW2 which was sealed and labelled containing the signatures of witnesses and PW2. PW2 registered the case as per Ext.P2 FIR on the basis of suo motu report which is marked as Ext.P2(a). By Ext.P3 property list, he had the contraband article produced before court. The delay in producing the articles before the court, according to him, was due to his law and order duty and he had no time to spare and he could not go to the court and entrust the properties. PW3 is the Investigating Officer. He recorded statements of witnesses, obtained the Chemical Analysis Report and laid charge before court.

3. The court before which the final report was laid, took cognizance of the offence and finding the offences to be exclusively triable by a Court of Sessions, committed the

case to Sessions Court, Thodupuzha under Section 209 of Cr.P.C. after following the necessary procedures. The said court made over the case to Additional Sessions Court, (Adhoc-I), Thodupuzha, for trial and disposal.

4. The latter court, on receipt of records and appearance of the accused before the said court, framed charges for the offences punishable under Sections 55(a) and 8(1) & (2) 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 4 examined and had Exts.P1 to P5 marked. MOs 1 and 2 were 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. Presumably impressed by the evidence of PWs 2 and 4, and also impressed by the fact that Ext.P1 mahazar contains all the details, the court below found that prosecution has succeeded in establishing the case against the first accused and therefore convicted and sentenced him as already mentioned.

9. Assailing the conviction and sentence, the learned counsel appearing for the appellant raised two contentions. The first among them is that there is considerable delay in the production of contraband articles seized from the possession of the accused. Elaborating on this aspect, the learned counsel for the appellant pointed out that the detection of the offence was on 10.03.2002 whereas, the thondi articles reached the court only on 20.03.2002. There is no valid explanation offered for the delay. For the above proposition, the learned counsel relied on the decision reported in **Ramankutty v. Excise Inspector, Chelannur**

Range (2013 (3) KHC 308). The second contention is based on the forwarding note. Admittedly there is no forwarding note marked in this case. In the decision reported in **Joseph v. State of Kerala** (2009 (4) KHC 537), **Majeedkutty v. Excise Inspector** (2015 (1) KLT 624) and **Krishnan v. State** (2015 (2) KLT SN 8), the necessity and importance of forwarding note containing the specimen sample seal had been emphasized. Therefore, it is contended that the prosecution is bad.

10. The learned Public Prosecutor tried to support the finding of the court below. It was pointed out that there is no reason to disbelieve PWs 2 and 4 and the detection is proved. Emphasize is laid on the fact that the mahazar prepared namely Ext.P1 contains the sample seal so that the non-production of forwarding note is of no consequences in the case on hand. It is contended by the learned Public Prosecutor that in the light of the clinching evidence furnished by PWs 2 and 4 and other items of evidence, no

grounds are made out to interfere with the conviction and sentence passed by the court below.

11. After having heard the learned counsel for the appellant and the learned Public Prosecutor and after having perused the records, the main ground on which the conviction is assailed is the delay in producing the materials before court. Admittedly the articles were seized on 10.03.2002 and they were produced in Court only on 20.03.2002. The explanation offered by PW4 is that he was engaged in other duties and he had no time to spare to produce the articles in court. The above explanation is totally unsatisfactory. There is nothing to show that PW4 was so busy that he could not get time to produce the articles before court within a reasonable time. This Court in the decision reported in **Ramankutty v. Excise Inspector, Chelannur Range** (2013 (3) KHC 308), it was held that unexplained delay in producing the contraband before the court after seizure is fatal to prosecution case.

12. It can be seen from the above decision that the court views delay very seriously and if convincing and cogent reasons are not given for delay, the contention based on delay cannot be easily brushed aside. In the light of this fact, necessarily the prosecution has to fail.

13. The issue regarding forwarding note needs to be produced in the case on hand, need not be considered in this case in view of the fact that sample seal is available in Ext.P1 mahazar.

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