

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

CRL.A.No.1029 of 2006

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AGAINST THE JUDGMENT IN SC 267/2005 of ADDL.SESIONS COURT  
(ADHOC)-II, THODUPUZHA DATED 07-04-2006

APPELLANT/ACCUSED:

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SASEENDRAN @ SUSEENDRAN,  
S/O. KUNJAPPAN, PANACKAL VEEDU, SELLIAMPARA KARA,  
KUNCHITHANNI VILLAGE.

BY ADV. SRI.P.CHANDY JOSEPH

RESPONDENT/COMPLAINANT:

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

BY SMT. MADHUBEN, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON  
19-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.BHAVADASAN, J.**

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**Crl. Appeal No.1029 OF 2006**  
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**Dated this the 19<sup>th</sup> day of November, 2015.**

**J U D G M E N T**

The accused in this case faced prosecution 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 one year and to pay a fine of Rs.1 lakh with default clause of rigorous imprisonment for three months.

2. The incident which gave rise to the case occurred on 14.02.2002. PW4 who was the Assistant Sub Inspector of Vellathooval Police Station and who claims to be in charge of the Sub Inspector, received reliable information that one Saseendran at Ambazhachal who was running a tea shop was vending in liquor. He reached the place at about 3 p.m. After sending search memo to the court, the hotel was searched. From the charthu of the hotel, he was able to recover 4 bottles having capacity of 375 ml each containing Majestic XXX Rum and 2 bottles of 180 ml capacity containing Planter's Choice XXX Rum.

He, by taste and smell, identified the liquid as Indian Made Foreign Liquor. When the accused was asked about the same, he admitted that they are kept for sale. The accused was arrested and the contraband was seized. Ext.P1 is the mahazar prepared by him. The two bottles which were opened by him were taken as sample and they were sealed and labeled. The balance article was also sealed and labeled. The arrest memo is marked as Ext.P4. He returned to the station and registered Crime No.48/2002 as per Ext.P5 First Information Report. He conducted the investigation of the case. He prepared the property list Ext.P6 and also Ext.P7 forwarding note. He had the accused produced before court and did major portion of the investigation. Investigation was completed by his successor in office who laid charge before court.

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, Thodupuzha under Section 209 Cr.P.C after following necessary procedures. The said court made

over the case to Additional Sessions Court (Adhoc)-II, Thodupuzha for trial and disposal. The latter court, on receipt of records and on appearance of the 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.

4. The prosecution therefore had PWs 1 to 5 examined and Exts.P1 to P10 marked. M.O.s 1 to 3 were got identified and marked.

5. 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. He also stated that he, his brother and their family are running the hotel. The rent deed in respect of the building is in the name of the accused. There are two employees also. The accused stated that he, his wife and son are staying in the tea shop and he and his wife sleep in the charthu and their son sleeps in the hall. He stated that the articles seized from the charthu was kept for his own consumption and he had not bought it for selling to anybody.

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. Impressed by the evidence furnished by PW4 and also the contemporaneous document Ext.P1, the court below came to the conclusion that the offence had been made out and accordingly convicted and sentenced the accused as already mentioned.

8. Assailing the conviction and sentence, learned counsel appearing for the appellant contended that the quantity of liquor seized from the tea shop is less than the permissible limit at the relevant time and there is nothing to show that he had indulged in sale of article and there was no evidence of sale. It is also contended that even though detection was on 14.02.2002, articles were produced before court after one month and for that, there is no reasonable explanation offered by the prosecution. Relying on the decision in **Ramankutty vs. Excise Inspector, Chelannur Range** (2013 (3) KHC 308), it is contended that unless delay is properly explained, it is fatal to the prosecution.

That shows that the accused is entitled to acquittal.

9. Learned Public Prosecutor, on the other hand, contended that the evidence of PW4 is convincing enough taken along with contemporaneous document which belies any manipulation or fabrication, to show that the offence has been committed. At any rate, the court below chose to accept the evidence and find the accused guilty. Unless it is shown that the finding is perverse, interference is not called for.

10. The evidence of detection in this case rests solely on the evidence of PW4. His evidence shows that receiving reliable information about the illegal activity committed by the accused in his hotel, after preparing search memo, he proceeded to the hotel. He then says about having recovered contraband article from the corner of charthu of the hotel. He then speaks about having taken sample from the contraband seized and also sealing and labeling of the same. He further speaks about having returned to the station and registered crime against the accused. He conducted a good portion of the investigation and also had prepared the property list. Ext.P1 mahazar narrates in detail the

acts committed by PW4. It also contains his specimen seal.

11. That the accused was in possession of the contraband is beyond dispute. Except for the version given by PW4 that the accused told him that the contraband was kept for sale, no act of sale or attempt to sale is proved by the prosecution. Merely seizing the article will not entitle the prosecution to come to the conclusion that it was kept for sale. No witness has been examined who has either bought liquor from the accused or who had seen the sale of liquor by the accused. In the absence of any such evidence, it is difficult to understand how the court below could have come to the conclusion that the article seized was kept for sale. If any authority is required, the same is furnished by the decisions in **Surendran vs. Excise Inspector** (2004 (1) KLT 404) and in **Sudhepan @ Aniyan vs. State of Kerala** (2006 (1) KLT SN 72).

12. Applying the principles laid down in the above decisions, there is absolute want of evidence to show that there was any sale or attempted sale from the side of the accused of contraband article to attract the offence under Section 55(a) of

Abkari Act.

13. Apart from the above fact, there is one glaring anomaly in the proceedings. The articles were seized on 14.02.2002. Going by the evidence furnished by PW4, contraband was produced before court after one month. No explanation whatsoever is offered by PW4 for the unusual delay in producing the article before court. The impact of delay was considered in the decision in **Ramankutty vs. Excise Inspector, Chelannur Range** (2013 (3) KHC 308) wherein it was held that unexplained delay in producing the contraband before court is fatal to the prosecution. The above decision insists for production of articles as soon as possible. A Division Bench of this Court has held that if the articles seized could not be produced before court forthwith and there is unusual delay, that has to be properly explained. In the case on hand, apart from the unusual delay, there is no explanation offered for the delay. Therefore, it is extremely doubtful whether one can rely on the contraband said to have been produced before court.

14. For the above reasons, this Court is unable to uphold

the conviction and sentence passed by the court below.

In the result, this appeal is allowed. The conviction and sentence passed by the court below 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.