

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA,  
1937

CRL.A.No. 593 of 2007  
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AGAINST THE JUDGMENT IN SC 1071/2005 of ADDL.SESIONS COURT  
FAST TRACK COURT NO.II, PALAKKAD.

APPELLANT(S)/ACCUSED:  
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BABU @ CHANDRA BABU, AGED 48 YEARS,  
S/O GOPALAN, LAKSHAMVEEDU COLONY, KOOTTUPATHA  
KOOTTATHARA, MUNDOOR.

BY ADVS. SRI.N.RAGHURAJ  
SRI.A.V.RAVI  
SMT.K.AMMINIKUTTY

RESPONDENT(S)/COMPLAINANT:  
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STATE OF KERALA – REPRESENTED BY THE  
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SMT. S. HYMA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON  
10-12-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

P. BHAVADASAN, J.

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Crl.Appeal. No. 593 of 2007  
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Dated this the 10<sup>th</sup> day of December, 2015.

JUDGMENT

The accused was prosecuted for the offence punishable under Section 55(a) read with Section 8(2) of the Abkari Act. He was found guilty. He was accordingly convicted and sentenced to undergo simple imprisonment for one year and to pay fine of Rs.1,00,000/–, in default, to undergo simple imprisonment for three months.

2. The short facts necessary for the disposal of this appeal are as follows:

The incident occurred on 16.9.2004. On that day, P.W.1, the Sub Inspector attached to Kongad police station, along with P.W.6 and others were on routine patrol duty. They received reliable information that the accused is vending in illicit liquor at Laksham Veedu Colony. P.W.1 claims to have reached the place of incident and seeing the police jeep, a person who carried the plastic bag in one hand and a glass in

the other tried to run away from the place. He was effectively prevented from doing so. The bag was seized and examined. It contained a plastic bottle. The contents were identified as arrack. A sample of 280 ml was taken from a bottle which was poured into three separate bottles and sealed and labelled. The label contained the signature of P.W.1, independent witnesses and the accused. The mahazar prepared by P.W.1 is Ext.P1 and the arrest memo is Ext.P2. They returned to the station and registered crime No. 242 of 2004 as per Ext.P3 FIR. The property list prepared by him is Ext.P4. Further investigation in the case was done by P.W.7.

3. P.W.7 was at the relevant time the Sub Inspector of Police attached to Hemambika Police Station and he took over the investigation of the case as per the instructions given by Dy.S.P., Palakkad. He prepared Ext.P6 mahazar, and sent Ext.P7 forwarding note to the court to have the sample sent for chemical analysis. He obtained Ext.P8 report. He recorded

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

4. The court, before which final report was laid took cognizance of the offence. Finding that the case is exclusively triable by a court of Sessions, the said court committed the case to Sessions Court, Ottapalam. The said court made over the case to Additional Sessions Court Fast Track No.II, Palakkad for trial and disposal.

5. The latter court, on receipt of records and on appearance of the accused, framed charge for the offence punishable under Section 55(a) read with Section 8(2) of the Abkari Act. To the charge, the accused pleaded not guilty and claimed to be tried. The prosecution therefore had P.Ws.1 to 7 examined and had Exts.P1 to P8 marked. M.Os. 1 to 5 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.

6. The court below presumably impressed by the evidence of P.Ws. 1 and 6 and also the fact that Ext.P1 mahazar contains the essential details which is the contemporaneous document and therefore there could be no manipulation etc., found that there is overwhelming evidence to show that the accused has committed the offence and accordingly found him guilty. Conviction and sentence followed.

7. Assailing the conviction, Shri. N. Raghuraj, learned counsel appearing for the appellant, contended that this appeal will have to succeed on a very short ground. Learned counsel relied on the evidence of P.W.7, who is the investigating officer. Admittedly, according to the learned

counsel, the place of occurrence is within the jurisdiction of Kongad Police Station over which P.W.7, who belongs to Hemambika police station, had no territorial jurisdiction.

8. P.W.7 says that he was authorised by the Dy.S.P., Palakkad. Learned counsel pointed out that once the notification defining territorial jurisdiction is issued, authorisation cannot have any effect. Therefore, the investigation was done by an incompetent officer. The prosecution case based on a final report filed by such an officer is illegal. For the said purpose, learned counsel relied on the decision reported in Saji @ Kochumon v. State of Kerala (2010 (3) K.L.T. 471).

9. Learned Public Prosecutor on the other hand contended that it was by virtue of the delegation by the superior officer that P.W.7 has acted and there could be no infirmity in his actions.

10. The contention of the learned Public Prosecutor may look attractive. But this Court has held on several occasions that Abkari officer defined under the Act is one authorized under Section 5A of the Act as per notification and their power to exercise their rights under the various provisions of the Abkari Act is confined to the territorial limits mentioned in the notification. Obviously, P.W.7 was attached to Hemambika Police Station and the cause of action has arisen within Kongad Police Station where P.W.1 was the Sub Inspector. It is not in dispute that Kongad and Hemambika are two different territories which had nothing to do each other.

11. If that be the case, P.W.7 had no jurisdiction to conduct the investigation in a case which falls within Kongad Police Station.

12. Then the question is whether authorization can cure defect. Of course, it cannot. Authorization is not interpreted by the notification. If any doubt is there, the same

is answered by the decision reported in Saji @ Kochumon v. State of Kerala (2010 (3) K.L.T. 471).

13. The result is that the Investigating Officer being an incompetent person, any act done by him and the final report filed by him is non-est. If that be so, the prosecution should fail on that count.

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

P. BHAVADASAN,  
JUDGE

sb.