

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

CRL.A.No. 1077 of 2006 ()

AGAINST THE JUDGMENT IN SC 341/2004 of COURT OF THE ADDITIONAL
SESSIONS JUDGE FAST TRACK COURT NO.I (ADHOC), MANJERI DATED 24-04-2006

APPELLANT/ACCUSED:

NARAYANAN, S/O.CHAMI,
KOLOORAKAVIL, KOORAD DESOM, CHOKKAD AMSOM
NILAMBUR.

BY ADV. SRI.NOBLE MATHEW

RESPONDENT):

STATE OF KERALA,
REP. BY EXCISE RANGE INSPECTOR, KALIKAVU RANGE
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

PUBLIC PROSECUTOR SMT. S. HYMA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

P.BHAVADASAN, J.

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Crl.A.No.1077 of 2006

Dated this the 7th day of December, 2015

JUDGMENT

For the offence punishable under Sections 8(1) and (2) of the Abkari Act, the accused was found guilty and he was convicted and sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹1 lakh with a default clause of one year. Set off as per law was allowed.

2. The prosecution version of the incident is that, on the date of incident, i.e., on 4.12.2000, at about 4.30 pm while PWs 1 and 2 along with other officers were on routine patrol duty, when they reached in front of a house of Bappu, they happened to see the accused coming along the road carrying a can. Feeling suspicious, he was intercepted and the contents of can was examined in the presence of witnesses. It was found to contain 2 ½ litres of some sort of liquid. By taste and smell, it was identified as arrack. Ext.P1 arrest memo was prepared and he was arrested. PW1 took a sample of the contraband and had it labelled. He prepared Ext.P2 mahazar. He went to the station

concerned and handed over the articles and accused to the officer who was in charge of the station.

3. PW4 was the Excise Inspector at the relevant time and he deposes that on the basis of the documents and materials handed over to him by PW1, he registered crime as per Ext.P4 occurrence report. He prepared Ext.P5 property list and also the forwarding note as Ext.P6. From the records, it is seen that the accused and the contraband articles were produced before court on the very next day itself. PW5 conducted investigation of the case. He obtained Ext.P7 chemical examination report and recorded the statements of witness, completed investigation and laid charge before court.

4. 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, committed the case to Sessions Court, Manjeri. The said court made over the case to the Additional Sessions Court 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 Sections 8 (1) and (2) of the Abkari Act.

6. To the charge the accused pleaded not guilty and

claimed to be tried. Prosecution therefore examined PWs 1 to 5 and had Exts. P1 to P8 marked. MO1 was got identified and marked.

7. After the close of prosecution evidence, the accused was questioned under Section 313 Cr.P.C, wherein he denied all the incriminating circumstances put to him and maintained that he is innocent.

8. Finding that he could not be acquitted under Section 232 of the Cr.P.C., he was asked to enter on his defence. He chose to adduce no evidence.

9. Relying mainly upon the evidence of PW1 and 2 and the contemporaneous document namely Ext.P2 mahazar which contained all the essential details, the court found no reason to disbelieve the prosecution case and found the accused guilty. Conviction and sentence followed.

10. The main thrust of the contention raised by the appellant is that there is no independent evidence regarding the incident and the evidence regarding the detection of the offence remains confined to the official witnesses. In such type of cases, it is contended that it will be extremely dangerous to solely rely on the evidence of the officers of the department who are

interested in the prosecution of a person for such offences. Much is said about the arrest notice which according to the appellant, does not disclose that there were signatures of the close relatives of the accused.

11. The learned Public Prosecutor on the other hand contended that there is nothing to doubt the evidence of PW1 and PW2 and mahazar prepared by PW1, which contains all details. The court below has meticulously considered the evidence in detail and there are no grounds made out to interfere.

12. After having gone through the evidence, especially the evidence of PWs 1 and 2 and also after having gone through Ext.P1, there seems to be considerable force in the submission made by the learned Public Prosecutor. PWs 1 and 2 give consistent and uniform version of the incident. Both of them say of having gone on patrol duty and finding the accused coming along the road carrying a can. They speak about his interception, seizure of the can and examination of the contents of the can. They also speak about the sampling done by PW1.

13. The main contention raised is that the independent witness, namely PW3 has not supported the prosecution case.

14. It is true that he has not stood by the prosecution.

However, he admitted his signature on Ext.P2 mahazar. It is significant to notice that PW3, the independent witness does not say that he signed in Ext.P2 mahazar elsewhere.

15. It is not the rule that the testimony of the excise officer or the police officer can under no circumstances be taken as sufficient to prove the prosecution case. If in fact their evidence is found to be cogent and convincing enough and contains a ring of truth, there is no reason as to why it should not be accepted. After all, corroboration is only a rule of prudence and not a rule of law, and if at all any corroboration is required, the same is available in the form of Ext.P2 mahazar. That is a contemporaneous document brought into existence and that contains all the essential details spoken to by PWs 1 and 2.

16. Yet again, the prompt production of the accused, the contraband articles and the documents before the court further lends credence to the prosecution version of the incident. It was the above factors, which weighed with the lower court in coming to the conclusion that offence has been made out. It could not be said that the finding is perverse or is based on irrelevant materials. The possibility of coming to a different view is no ground to interfere exercising appellate jurisdiction wherein it is

found that the court below has not erred in any manner in its manner of approach. The conviction has only to stand.

17. Faced with the above situation, the learned counsel appearing for the appellant contended that leniency may be shown with regard to the sentence, being too harsh considering the quantity of articles seized and the age of the accused. Further it is pointed out that he has no criminal antecedents and subsequently also there is no criminal conduct reported on his behalf. Further, the learned counsel emphasised that 16 years have elapsed and it will be cruel to sustain the sentence awarded by the court below.

18. After having given anxious consideration into various contentions raised regarding sentence, there seems to be some justification in the contention that the sentence is on a higher side, compared to the gravity of the offence. As pointed out by the learned counsel for the appellant, there are no criminal antecedents and after having gone on bail, this Court is not informed about any subsequent conduct on his part of similar nature.

For the above reasons, while upholding the conviction of the accused for the offence punishable under Section 8 (1) and (2) of

the Abkari Act, the sentence awarded by the court below is set aside and instead, he is sentenced to undergo simple imprisonment for a period of three months and to pay a fine of ₹1 lakh and in default of payment of which, he is to suffer simple imprisonment for one month. Set off as per law will be allowed.

**P.BHAVADASAN,
JUDGE**

kp/-