

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

CRL.A.No.1087 of 2006

AGAINST THE JUDGMENT IN SC 294/2002 of ADDL. SESSIONS COURT
(ADHOC-III), KASARAGOD DATED 02-06-2006

APPELLANT/ACCUSED:

K.RAMU, S/O. BABU,
NEAR NELLIKUNNU OVER BRIDGE, KASARGOD.

BY ADVS.SRI.M.THAMBAN
SMT.T. SUDHAMANI

RESPONDENT/COMPLAINANT:

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

BY SMT. LILLY LESLIE, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
01-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.1087 OF 2006

Dated this the 1st day of October, 2015.

J U D G M E N T

The accused was prosecuted for the offence punishable under Section 55(a) of Abkari Act. He was found guilty. He was therefore convicted and sentenced to undergo simple imprisonment for four years and to pay a fine of Rs.1 lakh with default clause of simple imprisonment for six months. Set off as per law was allowed.

2. The prosecution case is that on 27.03.2001, while PW1 along with other police officials had gone for routine patrol duty, at about 6.20 p.m, when they reached the Nellikkunnu Railway Over Bridge, they saw a person standing on the south western side of the pathway carrying a plastic bag. They found the said person taking something from the bag and handing over the same to another person. The other person was seen handing over money to the former. By the time officers reached the place, the person who bought the article escaped leaving the

person who was selling the article at the spot. The vendor was intercepted and on examination of the contents of the plastic bag possessed by him, it was found to contain 77 packets of 100ml Karnataka arrack. Ext.P1 arrest memo was prepared and the accused was arrested. Ext.P2 is the mahazar prepared by PW1 on the spot. The contents of 8 packets were emptied into 2 bottles having a capacity of 375 ml and they were taken as samples and were sealed and labeled and the labels contained the signatures of PW1, accused and the witnesses. He then returned to the Station and registered crime as per Ext.P3 First Information Report.

3. Investigation was done by PW7. He would say that he sent the sample and property list with a forwarding note to the court. Ext.P5 is the property list and Ext.P6 is the forwarding note. Chemical analysis report namely, Ext.P7 was obtained by him and he prepared Ext.P4 scene mahazar. He recorded the statement of witnesses, completed the investigation and laid charge before court.

4. The court before which charge 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, Kasaragod under Section 209 Cr.P.C. The said court made over the case to Additional Sessions Court (Ad hoc) III, Kasaragod for trial and disposal. The latter court, on receipt of records and on appearance of the accused before court, framed charge for the offence under Section 55(a) of Abkari Act, to which, accused pleaded not guilty and claimed to be tried.

5. The prosecution therefore had PWs 1 to 7 examined and Exts.P1 to P7 marked. M.O.s 1 to 3 were got identified and marked.

6. After the close of the prosecution evidence, 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 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.

8. Based mainly on the evidence of PWs 1, 4 and also

Ext.P2 mahazar, court below came to the conclusion that the prosecution has established the case against the accused. Conviction and sentence as already mentioned followed.

9. Assailing the conviction and sentence, learned counsel appearing for the appellant pointed out that the court below has omitted to note certain vital aspects in the case. The date of detection was 27.03.2001 and the contraband article was produced before court only on 03.04.2001. No reasonable explanation is offered for the delay in producing the material before court. So also, according to the learned counsel, there is no evidence to show as to whose custody the property remained before production before court. The unusual delay in production of article before court may vitiate the proceedings, it is contended. For the said proposition, learned counsel relied on the decision in **Ramankutty vs. Excise Inspector, Chelannur Range** (2013 (3) KHC 308). It is, therefore, contended that the conviction and sentence cannot stand.

10. Learned Public Prosecutor, on the other hand, contended that the entire details are contained in Ext.P2 mahazar

and it is unnecessary that other documents contain the same information. The evidence of PWs 1 and 4 are without blemish and there is no reason as to why their evidence should be rejected. If the evidence of PWs 1 and 4 are found to be convincing enough, even assuming there are no independent evidence to corroborate their evidence, conviction may be possible. In the case on hand, learned Public Prosecutor pointed out that the accused had no grievance that he had been falsely implicated by PW1 or PW4 with oblique intention or motive. There is no reason to disbelieve PWs 1, 4 and Ext.P2. Accordingly, it is contended that the conviction and sentence cannot warrant interference.

11. It is not in dispute that PW1, at the relevant time, was the Sub Inspector of Police, Kasaragod Police Station. On the date of incident i.e. on 27.03.2001, PWs 1, 4 and other officers went for patrol duty and at about 6.20 p.m when they reached the over bridge at Nellikkunnu, they happened to see someone vending in some article at the south western corner. He was intercepted and the article in his possession was seized. When

the officers approached the person concerned, the person to whom the articles were being sold ran away from the place. PW1 seized the article in possession of the accused and taken sample and on the sample he had the signatures of his, witnesses and the accused affixed. He then returned to the Station and prepared Ext.P3 First Information Report. Further investigation was done by PW7 who recorded the statement of witnesses, prepared Ext.P4 scene mahazar, Ext.P5 property list, Ext.P6 forwarding note and received Ext.P7 chemical analysis report and laid charge before court.

12. Evidence of detection is furnished by PW4 who is alleged to have accompanied PW1 for patrol duty. His evidence is almost in conformity with the evidence furnished by PW1.

13. The lower court seems to have been greatly impressed by the evidence of PWs 1, 4 and 7 and also the contents of Ext.P2. Admittedly, the date of detection of offence is 27.03.2001. It is seen the M.O.s 1 to 3 were produced before court on 03.04.2001. It is significant to notice that after registration of crime as per Ext.P3 First Information Report by

PW1, further investigation was done by PW7 who had no case that after registration of the crime, he had kept custody of the article till he produced the same before court on 03.04.2001. PW7 investigating officer took over the investigation on 28.03.2001. He does not say that he has handed over the article which was seized by PW1. He speaks about preparation of property list, forwarding note etc. In cross examination, he was asked for the delay in producing the article before court and he had no reasonable explanation for the same. It is significant to notice that in Ext.P2 mahazar, labeling and sampling has been done only in respect of the sample taken and there is no mention that rest of the articles which were seized had been sealed and labeled containing the signature of the detecting officer, witnesses and the accused. There is want of evidence to show as to whose custody M.O.s 1 to 3 remained from 27.03.2001 to 03.04.2001. This Court had occasion to consider the consequence of delayed production of article before court. In the decision in **Ramankutty vs. Excise Inspector, Chelannur Range** (2013 (3) KHC 308), it was held that the unexplained

delay in producing the contraband before court after seizure is fatal to the prosecution case.

14. It is no doubt true that in the decision in **Ravi** vs. **State of Kerala** (2011 (3) KLT 353), a Division Bench of this Court had occasion to observe that even though Section 102(3) Cr.P.C stipulates that the property list should be forwarded to the court forthwith, the said provision does not say that the property should be produced before court forthwith. But in case there is any delay, that should be properly explained. Even assuming that some allowance can be given to late production, delay from 27.03.2001 to 03.04.2001 is too long and remains unexplained. Apart from the above fact, there is want of evidence to show in whose custody article remained till production. In the absence of seal or label, it is not possible to say that the article produced on 03.04.2001 was the article which was seized on 27.03.2001. Applying the principles laid down in the above decision, it was necessarily to be held that proceedings cannot stand.

For the above reasons, 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 is acquitted of the charge 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.