

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

CRL.A.No. 1104 of 2006 ()

**AGAINST THE JUDGMENT IN SC 142/2004 of ADDITIONAL DISTRICT & SESSIONS
COURT, FAST TRACK-I, THIRUVANANTHAPURAM**

IN CP 67/2003 OF JUDICIAL FIRST CLASS MAGISTRATE -II, ATTINGAL

APPELLANT(S)/ACCUSED:

**RAVEENDRAN, S/O. PADMANABHAN,
PANGUVILA VEEDU, KATTAIKONAM, ALINERA MURI
AYIROOPPARA VILLAGE, THIRUVANANTHAPURAM DISTRICT.**

BY ADV. SRI.P.K.MUHAMMED

RESPONDENT(S)/COMPLAINANTS:

- 1. STATE OF KERALA, REPRESENTED
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**
- 2. SUB INSPECTOR OF POLICE,
MANGALAPURAM, THIRUVANANTHAPURAM DISTRICT.**

BY PUBLIC PROSECUTOR SMT. LILLY LESLIE

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 1104 of 2006

Dated this the 03rd day of December, 2015

J U D G M E N T

As per the prosecution case, the accused, who was seen vending in liquor, was prosecuted for the offences punishable under Sections 55(a) and 8(1) & (2) of the Abkari Act. He was found guilty. He was therefore convicted and sentenced to suffer simple imprisonment for six months and to pay a fine of ₹1 lakh with a default clause of simple imprisonment for a further period of six months. Set off as per law was allowed.

2. The prosecution case is that on 12.06.2003, PW4 the Additional of Sub Inspector of Police of Mangalapuram Police Station, on getting information about the sale of illicit liquor, proceeded to the spot and on the way found the accused standing by the side of an electric post with a plastic bottle and glass with him. He was seen pouring the liquid into a glass and handing it over to another person.

Seeing the Police Officers, except the accused, others ran away. The accused was intercepted and the bottle in his possession was seized. By taste and smell, the liquid was identified as arrack. After preparing the arrest memo, he was arrested. Ext.P1 mahazar was prepared at the spot. According to PW4, the bottle and glass were seized and sealed. Thereafter, PW4 and other officers along with the accused, contraband article and the documents returned to the Station and as per Ext.P2 FIR, registered crime against the accused. PW4 conducted investigation in the case, took statements of witnesses and he says that he filed an application before court requesting the court to take sample and have it sent for chemical analysis. The copy of the forwarding note so produced is marked as Ext.P4. After getting the Chemical Analysis Report, investigation was completed and charge was laid before court.

3. The court before which the final report was laid, took cognizance of the offences and finding the offences to

be exclusively triable by a Court of Sessions, committed the case to Sessions Court, Thiruvananthapuram under Section 209 of Cr.P.C. after following the necessary procedures. The said court made over the case to Additional District and Sessions Court, (Fast Track-I), Thiruvananthapuram, 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. He

denied having committed any act which would constitute an offence.

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. Convinced by the testimony given by PWs 4 and 3 and impressed by the fact that the contemporaneous documents gave the entire details and also impressed by the fact that the articles and the accused were promptly produced before court, the court below found no reason to doubt the prosecution version of the incident and held the accused guilty. Conviction and sentence followed.

9. Sri. P.K. Muhammed, the learned counsel appearing for the appellant assails the conviction on several grounds. Two of the main grounds on which he placed his reliance was that there is no evidence in the case as to who had taken the sample and from where and when the sample was taken. The other contention taken was that there is

contradiction in the evidence of PWs 3 and 4 regarding the seizure of the contraband article and sealing and sampling of the contraband article taken from the possession of the accused. The learned counsel contended that on the above two grounds, the appellant is entitled to succeed.

10. The learned Public Prosecutor on the other hand contended that the evidence of PWs 3 and 4 the two Police Officers among whom PW4 is the Detecting Officer unerringly pointed out the guilt of the accused and their version of the incident is consistent, cogent and convincing enough. Their evidence receives corroboration from Ext.P1, which is contemporaneous document and the chances of manipulation is rather remote. The learned Public Prosecutor pointed out that the court below has analysed the evidence in considerable detail and has come to the conclusion that the offence has been made out. There are no grounds made out to interfere with the said finding.

11. If the learned counsel would succeed on the first

point, then it becomes unnecessary to go into the second contention urged by the learned counsel for the appellant.

12. A reading of the evidence of PWs 3 and 4 leave one in no doubt that no sample was taken by PW4 on the spot. In fact, PW4 has specifically deposed before court that he had submitted forwarding note to the court requesting the court to have the sample taken and sent for chemical analysis. This shows that sample was taken from the court. In such cases, the person, who has taken the sample, had to be examined. This Court, on several occasion, had pointed out that when sample is taken from the court, the person who has taken sample has to be examined and authorisation will have to be duly proved. It is also significant to notice that in the property list produced, there is no mention of sample at all by PW4. It can only be so because the testimony of PW4 is clear to the effect that he had not taken any sample at the time of detection of offence and he left that exercise to be undertaken by the court. There is

absolutely no evidence to show as to how, when and where and who had taken sample in the court. In the absence of any such evidence, it may not be possible to hold that the sample sent for chemical analysis is the sample taken from the contraband article seized from the possession of the accused.

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