

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

CRL.A.No. 717 of 2007 (D)

AGAINST THE JUDGMENT IN SC 974/2005 of ADDITIONAL SESSIONS COURT
FAST TRACK-I, PALAKKAD DATED 02-03-2007

APPELLANT/ACCUSED:

THEETHUNNI , S/O.VELU,
ANDITHARA, ELAVANCHERY VILLAGE, CHITTUR TALUK.

BY ADVS.SRI.PHILIP T.VARGHESE
SRI.N.SASI

RESPONDENT/COMPLAINANT:

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM REPRESENTING EXCISE RANGE OFFICE,
NENMARA.

BY SMT.S. HYMA, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.717 OF 2007

Dated this the 16th day of September, 2015.

J U D G M E N T

The accused who faced prosecution for the offence punishable under Section 8 of Abkari Act 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 in this case occurred on 16.07.2000. On that day, PW1 along with his team of officers were on patrol duty and at about 7 a.m they happened to see the accused standing with a can in his hand near a pond. Feeling suspicious, they got down from the vehicle and approached the accused and seized the cannas from him. One examination of the contents, it was found to contain 2½ litres of arrack. PW1 took 300ml of arrack from the can as sample and had secured the sample and sealed the same. Label containing the signatures of PW1 and accused was affixed on them. He prepared Ext.P1 mahazar. Accused was

arrested as per Ext.P2 arrest memo. He returned to the office and registered a crime as per Ext.P3. He had the articles produced before court on the next day and the sample taken by him was requested to be sent for chemical analysis with a forwarding note Ext.P4. The chemical analysis certificate received from the laboratory is marked as Ext.P5.

3. PW5 is the investigating officer. He took the statement of witnesses and prepared Ext.P6 scene mahazar. He completed the investigation and laid charge before court.

4. Cognizance of the offence was taken by Judicial First Class Magistrate Court, Chittur. Finding that the offence is exclusively triable by a Court of Sessions, the said court committed the case to Sessions Court, Palakkad under Section 209 Cr.P.C after following the statutory procedures. Sessions Court made over the case to Additional Sessions Court (Fast Track-I), Palakkad for trial and disposal. The latter court, on receipt of records and on appearance of the accused, framed charge for the offence punishable under Section 8 of Abkari Act. The charge was read over to the accused, to which, he pleaded

not guilty and claimed to be tried.

5. The prosecution, therefore, had PWs 1 to 5 examined and Exts.P1 to P6 marked. M.O.1 was also 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 and that he has been falsely implicated.

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. Relying mainly on the evidence furnished by PWs 1 and 2 and on Ext.P1, a contemporaneous document, the court below came to the conclusion that the prosecution has succeeded in establishing the case against the accused. The conviction and sentence as already mentioned followed. The said conviction and sentence are assailed in this appeal.

9. Learned counsel appearing for the appellant raised two

points for consideration. It is pointed out that according to the prosecution evidence, information regarding arrest was furnished to the daughter of the brother of the accused who was not examined before court and there is no compliance with the statutory requirements. The second contention taken is that there is no independent evidence to show that the offence has been committed by the accused. The prosecution case rests solely on the evidence of official witnesses. In such cases, it is pointed out that it will be hazardous to enter a finding solely based on the evidence of witnesses who has been characterised by the counsel as interested witnesses.

10. Learned Public Prosecutor, on the other hand, pointed out that there is nothing suggested to either PW1 or PW2 that they had any reason to falsely implicate the accused. They have given a uniform and consistent version regarding the incident. Their testimony gets ample support from Ext.P1, a contemporaneous document drawn up at the relevant time, and production of article seized before court on the next day further fortifies the prosecution. The court below, according to the

learned Public Prosecutor, analysed the evidence in considerable detail and has come to the conclusion that the offence is made out. It could not be said that the finding is either perverse or contrary to the evidence on record. Learned Public Prosecutor therefore contended that no interference is called for in the findings of the court below.

11. As rightly pointed out by the learned counsel for the appellant, the prosecution solely rests upon the evidence of PWs 1 and 2, official witnesses among whom PW1 is the detecting officer. He speaks about the patrolling duty he was carrying on along with his team of officers and also having seen the accused standing near a pond carrying a can. He then says about having approached the accused and seized the can from him. PWs 1 and 2 says about examination of contents of the can which turned out to be arrack. Both of them say about sampling, labeling, sealing etc. PW1 speaks about preparation of arrest memo and seizure mahazar and registration of crime. Learned counsel for the appellant was unable to show any glaring inconsistency or contradiction in the evidence of PWs 1 and 2.

They have almost given a uniform version about the incident. The version of PWs 1 and 2 is further fortified by Ext.P1 seizure mahazar which narrates the entire details of detection. Being a contemporaneous document, Ext.P1 carries considerable weight. Further, prosecution has shown that accused and the contraband articles were produced before court promptly which would also indicate that there is nothing to doubt the prosecution case. The fact that the daughter of the brother of the accused who got intimation about the arrest was not examined does not improve the case of the defence at all. It is not suggested to PW1 that the accused was not arrested at all.

12. As usual, independent witnesses turned hostile. But, it is not the law that evidence of officers will have to be always corroborated by independent sources. If the evidence of the officers concerned is found to be without blemish and is credit worthy, there is no justification or reason as to why the court should discard the same. In the case on hand, as already noticed, Ext.P1 contains all the details. There is no suggestion to PWs 1 and 2 that they had any reason to falsely implicate the

accused. The court below was therefore, on appreciation of the evidence taken along with the document produced by the prosecution, came to the conclusion that the offence has been made out. On re-appreciation of the evidence, this Court finds no reason to take a different view.

13. Faced with the above situation, learned counsel appearing for the appellant contended that the sentence imposed is very harsh considering the age of the accused and also the quantity of the article seized. He prayed for leniency.

14. There seems to be some force in the above submission. The quantity seized is only 2½ litres and the accused is well advanced in age. He has already undergone pre-trial for some period.

15. Considering the totality of the circumstances, it is felt that the interest of justice will be served by sentencing the accused for simple imprisonment for one month and imposing fine of Rs.1 lakh with default clause of simple imprisonment for one month.

In the result, while confirming the conviction for the offence

under Section 8 of Abkari Act, the sentence imposed by the court below is set aside and the accused is sentenced to undergo simple imprisonment for one month and to pay a fine of Rs.1 lakh in default of payment of which to suffer simple imprisonment for one month.

This appeal is disposed of as above.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.