

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

CRL.A.No. 1236 of 2006 ()

**AGAINST THE JUDGMENT IN SC 712/2005 OF THE ADDITIONAL SESSIONS COURT
FAST TRACK II, PALAKKAD DATED 31-05-2006**

APPELLANT(S)/ACCUSED:

**KUNCHAPPU, S/O.APPU,
THEKKUM KALLA, AMBITTAN THARISS
KIZHAKKANCHERRY NO. II VILLAGE.**

**BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.P.M.RAFIQ**

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT. LILLY LESLIE

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 1236 of 2006

Dated this the 18th day of December, 2015

J U D G M E N T

The accused was prosecuted for the offences punishable under Sections 55(g) and 8(2) of the Abkari Act. He was found guilty. He was therefore convicted and sentenced to suffer simple imprisonment for one year and to pay a fine of ₹1 lakh with a default clause of simple imprisonment for a further period of four months. Set off as per law was allowed.

2. The incident in this case is said to have occurred on 12.09.1999 when the accused was of 85 years of age. According to PW1, he along with PW3 and other officers had gone on routine patrol duty. While they were engaged in their duty, they got reliable information that the accused was keeping wash. With two independent witnesses, he went to the place where the accused resided and the accused was in his house. On examining the compound of

the house of the accused, from the south-western side of the house, among the twining plants, two plastic pots were seized. They were opened and PW1 was convinced that it was wash. One litre from each of the pots was taken as sample and it was labelled and sealed. Rest of the wash was destroyed on the spot. Ext.P1 is the mahazar prepared by him. He returned to the station and on the basis of the records available, he registered crime as per Ext.P3(a). Further investigation of the case was conducted by the Circle Inspector, Vadakkancherry. He recorded the statements of witnesses, obtained Chemical Analysis Report and after completing investigation, filed final report before court.

3. The court before which the final report was laid, took cognizance of the offence and finding the offences to be exclusively triable by a Court of Sessions, committed the case to Sessions Court, Palakkad under Section 209 of Cr.P.C. after following the necessary procedures. The said

court made over the case to Additional Sessions Court, Fast Track-II, Palakkad, 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 Section 55(g) and 8(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 7 examined and had Exts.P1 to P8 marked. MO1 was 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.

7. 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.

8. Based on the evidence of PWs 1 and 3 and Ext.P1 mahazar, the court below was impressed with prosecution story and found the accused guilty.

9. Assailing the conviction, the learned counsel appearing for the appellant raised only one point for consideration, though there are several other infirmities in the proceedings. The learned counsel pointed out that the prosecution allegation is that the contraband article was seized from the compound of the house belonging to the accused. In order to establish the said fact, PW2 has been examined and he stated that he issued Ext.P5 certificate. The learned counsel contended that it is not an authentic document and it cannot be relied on. If it is not accepted, there is no evidence to show that compound of the house belonged to the accused.

10. The learned Public Prosecutor on the other hand contended that PW2, the Village Officer has conducted enquiry and then he issued Ext.P5 certificate. The lower

court has chosen to accept the same and there is no reason as to why the conviction should not be sustained.

11. The evidence regarding the detection of the offence remains confined to the testimony of PWs 1 and 3. Of course, they give a uniform and consistent version regarding the incident. They speak in one voice regarding the detection, identification of the article, sampling etc.. PW1 also says about having registered crime against the accused. Ext.P1 is the contemporaneous document. It contains all the details spoken to by PWs 1 and 3. It could therefore be said that based on these items of evidence, the contraband article was seized from a compound.

12. The real question is whether the prosecution has been able to establish that the compound from where the article was seized belonged to the accused. For that purpose, the prosecution heavily relied on the testimony of PW2 and Ext.P5 issued by him. In chief examination, he would say that after conducting enquiry, Ext.P5 certificate is

issued. But in cross examination, he says that he had not issued any certificate showing possession of the property. Even otherwise, a document of nature as Ext.P5 has no legal value at all. There will of course be records showing the details regarding the property with the local authority. Without referring to any of the documents, Ext.P5 has been simply issued. In the case on hand, Ext.P5 issued by the Village Officer is not an authentic document showing the ownership and possession and it cannot be accepted.

13. Possession in the context means exclusive possession and for that purpose, it should be shown that premises from where the contraband was recovered, is in the exclusive possession of the accused. It must be remembered that the seizure was not from inside the house, but from outside the house. It is not necessary that accused should be in the know of things. There is no allegation that it was the accused who had kept the can in the place where they were found. A reasonable doubt is created in the mind

of the court regarding the involvement of the accused in the case.

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