

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

CRL.A.No. 793 of 2007

AGAINST THE JUDGMENT IN SC 211/2006 of ADDITIONAL SESSIONS COURT
(ADHOC)-I, MANJERI DATED 30-04-2007

APPELLANT/ACCUSED:

KRISHNANKUTTY, S/O. CHINNAKKUTTAN,
KINARADAPPAN, OORNGATTIRI, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENT/STATE:

THE STATE OF KERALA,
REPRESENTED BY THE EXCISE INSPECTOR,
MANJERI EXCISE RANGE - THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM
KOCHI-31.

BY SMT. S. HYMA, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
17-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.793 OF 2007

Dated this the 17th day of December, 2015.

J U D G M E N T

The accused was prosecuted for the offence punishable under Section 55(g) of Abkari Act. He 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 six months. Set off as per law was allowed.

2. The incident which gave rise to the case occurred on 19.07.2004. On that day, PW1, the then Excise Inspector, Manjeri along with PW2, the then Preventive Officer, with a team of officers had gone for routine patrol duty. As they were going along the ridge of the property owned by one Mehaboob, they found the accused coming in the opposite direction carrying a bucket. Seeing the Excise Officials, he became nervous and tried to retreat. His attempt was prevented and the bucket was

seized. The bucket contained some sort of liquid. By taste and smell, the liquid was identified as wash. Ext.P1 arrest memo was prepared and from the contents of the bucket, 500ml was taken as sample in a bottle of 750ml capacity and the balance contraband article was destroyed at the place of incident itself. The bottle and the bucket were sealed and labeled. The label contained the signature of accused, witnesses and PW1. The seal used was AKD. PW1 then returned to his office and registered Crime No.17/2004 as per Ext.P4 occurrence report. The property list was prepared and that is Ext.P5, and a requisition was sent to court for sending the sample for chemical analysis and that is marked as Ext.P6. He asserted that till the articles were produced before court, he was in custody of the same.

3. PW4 took over investigation. He recorded the statement of witnesses and obtained Ext.P8 chemical analysis report.

4. Further investigation was done by PW6 who completed the investigation and laid charge before court.

5. 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, the case was committed to Sessions Court, Manjeri. The said court made over the case to Additional Sessions Court (Adhoc)-I, Manjeri for trial and disposal. The latter court, on receipt of records and on appearance of accused, framed charge for the offence under Section 55(g) of Abkari Act. To the charge, accused pleaded not guilty and claimed to be tried.

6. The prosecution therefore had PWs 1 to 6 examined and Exts.P1 to P8 marked. M.O.1 series were got identified and marked.

7. 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.

8. 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.

9. Based mainly on the evidence furnished by PWs 1 and 2 and also the contemporaneous document, Ext.P2, and also the prompt production of accused and articles before court, court below came to the conclusion that the offence has been made out. Accordingly, conviction and sentence followed. The said conviction and sentence are assailed in this appeal.

10. Learned counsel appearing for the appellant pointed out that the finding of guilt rests solely on the interested testimony of PWs 1 and 2 and there is no independent corroborative evidence to support the same. It will be extremely dangerous in such circumstances to rely solely on the evidence of official witnesses who, in fact, are interested witnesses. If at all it is possible to take their evidence, it should be without blemish. Learned counsel went on to point out that the court below has not analysed the evidence in the proper perspective and that has resulted in a wrong finding being entered into.

11. Learned Public Prosecutor, on the other hand,

contended that none of the contentions taken by the appellant has any basis at all. Sufficient evidence is available on record to confirm the conviction and sentence and there are no grounds made out to interfere with the same.

12. It may be that the evidence regarding detection is confined to the testimony of PWs 1 and 2 who are Excise Officers. They gave uniform and consistent version regarding the incident. Both of them say that while they were on patrol duty, they happened to see the accused coming along the way and on seeing the Excise Officials, he became panicked and tried to hide himself. He was intercepted and the bucket in his possession was seized. It was found to contain wash. Both PWs 1 and 2 say about having taken sample and also having destroyed the balance wash in the bucket. They also say about having returned to the office and prepared the occurrence report.

13. It is true that the independent witness has turned hostile to the prosecution and the prosecution has to stand by the evidence furnished by PWs 1 and 2 who are official witnesses. If

the evidence furnished by the official witnesses are found to be cogent and convincing enough, then there is nothing to suspect their evidence. It is well settled by now that if the evidence of the official witnesses is beyond doubt, then to insist for corroboration will be impudent on the part of court. After all corroboration is only a rule of prudence and not a rule of law.

14. It is not as if there is no corroboration available in the case. Ext.P2 mahazar prepared at the spot reveals the picture of what transpired at the place and in fact corroborates the evidence of PWs 1 and 2. Then it could not be said that there is no corroborative evidence at all. The chemical analysis report shows that ethyl alcohol was detected in the sample. As rightly pointed out by the learned Public Prosecutor, there are no reasons to doubt the version given by PWs 1 and 2. It is without blemish. Even though they were cross examined at length, nothing was brought out in their evidence to show that they had any oblique motive or they had any reason to falsely implicate the accused. In the light of these circumstances, their evidence

is only to be accepted. That means, the conviction will have to be upheld.

15. Faced with the above situation, learned counsel appearing for the appellant pointed out that all what is seized from the accused is 10 litres of wash and therefore the sentence imposed is on the very high side and leniency be shown in that regard. Learned counsel also emphasised that the accused is not shown to have criminal antecedent nor is there anything to show that after having released on bail, he was indulged in any nefarious activities. It is also pointed out that nearly 11 years have elapsed since detection of offence and that passage of time brought considerable changes in the nature of living. Taking note of all these facts, learned counsel pointed out that leniency is warranted with regard to sentence in the case.

16. After having heard the learned counsel for the appellant and also after anxiously considering the prayer for modification of sentence, this Court feels that the sentence now imposed is on the higher side. Considering the quantity of

contraband seized and also the passage of time, it is necessary that leniency be shown with regard to sentence.

Thus, while confirming the conviction for the offence under Section 55(g) of Abkari Act, the sentence imposed is set aside and instead the accused is sentenced to suffer simple imprisonment for one month and to pay a fine of Rs.1 lakh with default clause of simple imprisonment for one month. Set off as per law will be allowed.

This appeal is disposed of as above.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.