

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

CRL.A.No. 1107 of 2005 ()

**S.C.NO. 401/2003 of ADDITIONAL DISTRICT AND SESSIONS JUDGE, FAST TRACK
COURT NO.1, (ADHOC), MANJERI.**

APPELLANT/ACCUSED:

**VELU, S/O.MAMAN,
KUTTIPULIYAN HOUSE,
THRIKALAMKODE,
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 PUBLIC PROSECUTOR: SMT. SEENA RAMAKRISHNAN

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

skr

K. RAMAKRISHNAN, J.

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Crl. Appeal No. 1107 of 2005

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Dated this the 1st day of September, 2015

JUDGMENT

The Accused in S.C.No.401 of 2003 on the file of Addl. Sessions Court, (Fast Track-1), Manjeri is the appellant herein. The appellant was charge sheeted by the Excise Inspector, Manjeri Excise Range in crime no. 8 of 2001 of Manjeri Excise Range under Section 55(a) of Abkari Act.

2. The case of the prosecution in nutshell was that on 26.10.2001 at about 6.30 a.m, accused was found to be in possession of 4 liters of illicit arrack and found transiting the same along the road at Thrikangode Amsom, Karikode Desom in violation of the provisions of the Abkari Act and thereby he had committed the offence punishable under Section 55(a) and (8) (1) of Abkari Act.

3. After investigation, final report was filed before the Judicial First Class Magistrate Court-1, Manjeri, where it was taken on file C.P.No. 78 of 2003. The learned Magistrate

committed the case to the Sessions Court, Manjeri under Section 209 of the Code of Criminal Procedure (hereinafter called 'the Code'). After committal the Sessions Judge had taken cognizance of the case as S.C.No.401 of 2003 and made over to Addl. Sessions Court (Adhoc -1), Manjeri, for disposal.

4. When the appellant appeared before the court below, after hearing both sides, charge under Section 55(a) and (8) (1) of Abkari Act was framed and same was read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PW1 to 5 were examined and Ext.P1 to P9 and MO 1 were marked on the side of the prosecution. After closure the prosecution evidence, the appellant was questioned under Section 313 of the Code and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that he had not committed any offence and he was innocent of the same. Since the evidence in this case did not warrant an acquittal under

Section 232 of the Code, the accused was called upon to enter on his defence, but no defence evidence was adduced on his side. After considering the evidence on record, the court below found the appellant guilty under Section 55(a) of Abkari Act and convicted him thereunder and sentenced him to undergo rigorous imprisonment for three years and also to pay a fine of Rs. 1 lakh, in default to undergo simple imprisonment for one year. Set off was allowed for the period of detention already undergone by him under Section 428 of the Code. Aggrieved by the same, the present appeal has been preferred by the appellant/accused before the court below.

5. Heard Sri.Ranjith, representing Sri. Babu.S.Nair, counsel for the appellant and Public Prosecutor, Smt. Seena Ramakrishnan appearing for the State.

6. The counsel for the appellant submitted that there was no specimen seal affixed on the sample or the material object before producing the same in court. Further the crime number, etc., were written from the office and that

will go to show that the transaction has not taken place as stated by the prosecution witnesses and that benefit must be given to the accused. So under the circumstances, it cannot be said that the prosecution has proved the case beyond reasonable doubt and he is entitled to get acquittal.

7. On the other hand the learned Public Prosecutor, Smt. Seena Ramakrishnan submitted that the evidence of PW1 will go to show that there was no possibility of tampering and the articles were produced before the Magistrate on the same day and as directed it was produced before the court on the next day. PW4 had deposed that it was he who had taken the article to court and produced the same as directed by PW1. So under the circumstances, according to the Public Prosecutor, prosecution has proved the case beyond the reasonable doubt and the order of the court below does not call for any interference.

8. The case of the prosecution as emerged from the prosecution witnesses was as follows. On 26.10.2001 at about 6.30 a.m, while PW1, the Excise Inspector and PW2

Preventing Officer along with the excise party was doing patrol duty and when they reached the place of occurrence at Thrikangode Amsom, Karikode Desom in front of one Vydan's house, they saw the accused coming with MO1 Cannas in his hands and on seeing the Excise Party he was found perplexed. So they stopped him. PW1 examined the contents of MO1 cannas which contained 4 liters some liquid and on examination, it was revealed that it was arrack. He convinced the same to PW3 and another eye witness and official witness. He took sample of 375 ml in a bottle and sealed the same using his personal seal and affixed the label containing his signature and the signature of the accused. He has also sealed MO 1 cannas in the same manner. He seized MO 1 cannas and the sample bottle as per Ext.P3 mahazar in the presence of PW3 and another. He arrested the accused and prepared Ext.P1 arrest memo and gave Ext.P2 arrest intimation to his brother who came there at the time of arrest. Thereafter they came to Excise Office and registered Ext.P4 occurrence report as

C.R.No.8/2001 under Section 55(a) and (8) (1) of Abkari Act against the accused. He prepared Ext.P5 property list and sent the same to court along with the article seized and produced the accused along with remand report through PW4 on the same day and the Magistrate had directed the properties to be produced in court on the next day, 27.10.2001 and remanded the accused to custody. According PW4 had re-entrusted the articles with PW1 and thereafter on the next day as directed by PW1, he produced the same before court on the next day. PW1 had sent Ext.P6 forwarding note with the specimen seal with a request to send the sample for analysis and the sample was sent from court to chemical examiners office, Thiruvananthapuram and Ext.P8 report obtained. It shows that it contained 42.63% by volume of Ethyl Alcohol. PW5 the Excise Inspector conducted the investigation. He questioned the witnesses and recorded the statements. He submitted Ext.P9 final report before court.

9. PW3 is an independent witness to the incident and

attestor to Ext.P3 mahazar. Though he had admitted his signature in Ext.P3 he denied having seen the seizure. He had further stated that knew the accused and he came to understand later that he was arrested by the Excise Officers. So it is clear from his evidence that he is now trying to help the accused and that was reason why he is not supporting the case of the prosecution.

10. Then the evidence available to prove the seizure was that of PW1 the detecting officer and PW2 the accompanying officer. PW1 had categorically stated that on that day, he was doing patrol duty along with PW2 and others in the office jeep and when they reached the place of occurrence, they saw the accused coming with MO1 kannas and on seeing the Excise party he was found perplexed. So he stopped him and examined the contents of the kannas with the help of PW2 and other officers and found that it contained 4 liters of some liquid which on examination by tasting and smelling he was convinced that it was arrack. thereafter he had taken the sample and sealed the sample

bottle and affixed label with the signature of himself and the accused. He had sealed MO1 kannas also in the same fashion. Thereafter he arrested the accused and prepared arrest memo. While they were doing the examination of the article, the brother of the accused came there and so they gave Ext.P2 arrest intimation to him. He further stated that he had seized the article as per Ext.P3 mahazar. Thereafter they came to excise office and registered the crime. Though he was cross examined at length nothing was brought out to discredit his evidence on this aspects. PW2 the preventing officer who accompanied PW1 also corroborated the evidence of PW1 on this aspect. He was also cross examined in length but nothing brought to discredit his evidence on this aspect. So the evidence of PW1 and 2 coupled with the admission PW3, regarding his signature in Ext.P3 will go to show that the prosecution has proved beyond reasonable doubt that the accused was arrested along with MO1 kannas containing of 4 liters of arrack.

11. The counsel for the appellant submitted that there was no specimen seal affixed in the seizure mahazar and also argued that the crime number was noted in the label from the office and that will go to show that there was possibility of tampering. It may be mentioned here that PW1 categorically stated that he had affixed his personal seal and he had further stated that the crime no. was written in the label from the office as the number could be written only from the office after the registration of crime. Further Ext.P6 forwarding note was sent to court on 26.10.2001 itself which contains the specimen seal used for sealing the article. Further it is seen from Ext.P5 property list that the articles along with the documents were produced before the Magistrate at his residence on 26.10.2001 at 11.50 a.m. itself and he had directed the article to be produced before the court on the next day namely 27.10.2001 and accordingly they were produced on the next day itself before the court. PW4 the Excise guard had proved that it was he who had taken the article along

with the accused and produced before the Magistrate on 26.10.2001 and thereafter he had re-entrusted the article to PW1 and on the next day, as directed to PW1 and the Magistrate, produced the article before the court on the next day itself. So this will go to show that there was no delay in producing the article so as to tamper the articles before producing the same before the court. Further PW1 had categorically stated that he was in possession of the article till it was produced before court. So under the circumstances, there is no merit in the submission made by the counsel for the appellant that there is no evidence to show that same articles which were seized from the possession of the accused had reached the court in tamper proof condition.

12. Ext.P8 chemical analysis report will go to show that the sample contained 42.63% by volume of ethyl alcohol. PW1 and 2 have categorically stated that the article seized was arrack and there was no dispute regarding the fact that the article seized was not arrack. So under the

circumstances, the court below was perfectly justified in coming to the conclusion that the prosecution has proved beyond reasonable doubt that the accused was found to be in possession of 4 liters of arrack, the possession of which is an offence after 03.06.1997 and punishable under Section 8(1) r/w Section 8(2) of Abkari Act. So the court below was perfectly justified in convicting the appellant for the offence of possession of arrack. But the conviction ought to be under Section 8(1) r/w 8(2) of Abkari Act not under Section 55 (a) of Abkari Act. So the conviction is converted to under Section 8(1) r/w 8(2) of Abkari Act. So the conviction entered by the court below is confirmed and it does not call for any interference.

13. Counsel for the appellant submitted that the sentence imposed is harsh. The court below sentenced the accused to undergo rigorous imprisonment for three years and also to pay a fine of Rs.1 lakh, in default to undergo simple imprisonment for one year. The counsel for the appellant submitted that the accused is now aged 70 years

and the incident occurred in the year 2001.

14. As regards abkari offences are concerned, persons who are committing the offences are committing the same knowing that it is an offences and ignoring the impact of their act on the public. Showing undue leniency in sentencing policy in such cases will only give room for persons to commit similar offences. But considering the age of the accused and also considering the quantity seized, this court feels some leniency can be shown in awarding the sentence. The court below had imposed only minimum fine of Rs. 1 Lakh. While retaining the fine, reducing the substantive sentence to one year rigorous imprisonment and reducing the default sentence to 3 months simple imprisonment will be sufficient and that will meet the ends of justice. So the substantive sentence and default sentence are set aside, the same is modified as follows. The appellant is sentenced to undergo rigorous imprisonment 9 months and also to pay a fine of Rs. 1 lakh, in default to undergo simple imprisonment for 3 months.

Set off is allowed for the period of detention already undergone by him under Section 428 of the Code.

So the appeal is allowed part. The order of conviction is converted to one under Section 8(1)r/w 8(2) of Abkari Act and conviction and the fine imposed are confirmed. But the sentence is modified as follows. The appellant is sentenced to undergo rigorous imprisonment for 9 months and also to pay a fine of Rs.1 lakh in default to undergo simple imprisonment for 3 months. Set off is allowed for the period of detention already undergone by him under Section 428 of the Code. Office is directed to communicate this order to the concerned court immediately.

Sd/-
K. RAMAKRISHNAN,
JUDGE.