

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

CRL.A.No. 1298 of 2006 ()

**AGAINST THE JUDGMENT IN SC 557/2005 of ADDITIONAL SESSIONS COURT, FAST
TRACK NO. II, PALAKKAD DATED 08-06-2006**

APPELLANT(S)/ACCUSED:

**ASHOKAN, AGED 51 YEARS,
S/O.RAJAN, ANTHOORKADU HOUSE, CHITHALI P.O.
KUZHALMANNAM, PALAKKAD DISTRICT.**

BY ADV. SRI.K.P.BALAGOPAL

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 22-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 1298 of 2006

Dated this the 22nd day of December, 2015

J U D G M E N T

The accused was prosecuted for the offences punishable under Section 55(a) read with Section 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 prosecution case runs thus:

PW1 was the Preventive Officer attached to Excise Circle Office, Alathur. On 20.08.1999, he and his team of officers had gone on routine patrol duty. When they reached the place of incident at 7.30 a.m., they saw a person standing there carrying a can with him. Noticing the conduct of the accused, PW1 felt suspicious and intercepted him. The can was seized. The capacity of the can was 5

litres and it contained about 3 litres of some sort of a liquid. By smell and taste, the liquid was identified as arrack. The accused was arrested and PW1 claims to have taken a sample of 200ml in a bottle of 375ml capacity. It was sealed and labelled as per the requisite procedures. The label contained the signatures of the accused, witnesses and PW1. Ext.P1 is the mahazar prepared by PW1 at the place of incident. PW1 says that later on, he entrusted the articles, the accused and the documents to the Alathur Circle Office. The Circle Inspector attached to that office has prepared Ext.P3 occurrence report. The property list prepared is Ext.P6. It is seen from the records that later on, the files were transferred to Kuzhalmannam Excise Range Office where again the crime was re-registered. Investigation was conducted, statements of witnesses were taken, Chemical Analysis Report was obtained and the charge was laid.

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(a) read with Section 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 4 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 testimony of PWs 1 and 2 and guided by the recital contained in Ext.P1 mahazar, the court below was of the opinion that the offences have been made out against the accused. Conviction and sentence followed.

9. The learned counsel appearing for the appellant assailed the conviction on the ground that PW1, who was attached to Alathur Excise Circle Office, was incompetent to make a search in Kuzhalmannam area which falls within another range and PW1 did not have the authority to act beyond his territorial limits. Relying on the decision reported in **Hamsa Koya v. State of Kerala** (2015 (2) KHC 206), it was contended that a Preventive Officer can only discharge his duties within the territorial limits and not beyond that. If that be so, according to the learned counsel, all the acts done by PW1 are without authority and it is a

nullity.

10. The learned Public Prosecutor on the other hand tried to support the finding of the court below and tried to get over the difficulty created by the territorial limits by pointing out that PW1 was the Preventive Officer at Alathur Excise Circle Office and he can act well within the jurisdiction of Kuzhalmannam Excise Range also.

11. It is by now well settled in the decision reported in **Hamsa Koya v. State of Kerala** (2015 (2) KHC 206) that an Abkari Officer cannot act beyond the territorial limits and any act done by him beyond his territorial limits is null and void.

12. Even though it was claimed that Kuzhalmannam Excise Office falls within the Alathur Excise Circle Range, there is no evidence regarding the same. The Preventive Officers are given authority to act within the specified areas and unless it is shown that PW1, a Preventive Officer attached to Alathur Excise Circle Office, can conduct search

and seizure in a different area falling within the same circle, the prosecution has to fail.

13. In the case on hand, it is quite evident that the place of occurrence falls within the Kuzhalmannam Excise Range and if that be so, since there is nothing to show that PW1 was, by virtue of his post in the Circle Office, entitled to act beyond his territorial limits, all acts taken by PW1 is non-est. If that be so, the entire prosecution case falls to ground.

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