

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. 1323 of 2006

AGAINST THE JUDGMENT IN SC 726/2005 of ADDL.SESIONS COURT
FAST TRACK -II, PALAKKAD DATED 07-07-2006

APPELLANT/ACCUSED:

K.M. RAJAN, AGED 54 YEARS,
S/O. APPUNNI, KULUNDAMPARAMBU, PARUTHIPULLY,
PALAKKAD DISTRICT.

BY SRI.C.C.THOMAS (SENIOR ADVOCATE)

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
SUB INSPECTOR OF POLICE, KOTTAYI POLICE STATION,
PALAKKAD DISTRICT, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

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.1323 OF 2006

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) read with Section 8(2) and 58 of Abkari Act. He was found guilty and was therefore convicted and sentenced to suffer simple imprisonment for four years and to pay a fine of Rs.1 lakh with default clause of simple imprisonment for six months. Set off as per law was allowed.

2. The prosecution case is that on 30.07.2003, as usual, PW1, the Sub Inspector of Police, Kottayi Police Station along with PW2 and other officers had gone for patrol duty and on the way they received an information that Rajan S/o. Appunni is carrying out illicit distillation in his house. The team of officers led by PW1 surrounded the house of accused. When they entered the kitchen, they found a large aluminum vessel kept on fire with a liquid. The contents of the vessel were identified as wash. Nearby they found a plastic can with 2 litres capacity

and the contents were revealed to be arrack. From the aluminum vessel containing about 8 litres of wash, 750 ml was taken as sample in three bottles. The sample so taken was sealed and labels were affixed on the same containing the signature of accused, witnesses and PW1. From the can containing 2 litres of arrack, 180 ml was taken as sample in three bottles and they were also sealed and labeled. Ext.P1 is the search memo, Ext.P2 is the search list and Ext.P3 is the arrest memo. PW1 returned to the station along with the contraband articles and the accused and registered Crime No.95/2003 as per Ext.P4 First Information Report. The accused was produced before court on the same day.

3. Investigation was conducted by PW6. He prepared Ext.P7 scene mahazar, obtained Ext.P8 chemical analysis report and he was also able to secure ownership certificate Ext.P9. He completed the investigation and laid charge before court.

4. 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, Palakkad. The said court made over the case to Additional Sessions Court Fast Track-II, Palakkad 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) read with Section 8(2) and 58 of Abkari Act. To the charge, accused pleaded not guilty and claimed to be tried.

5. The prosecution therefore had PWs 1 to 6 examined and Exts.P1 to P9 marked. M.O.s 1 to 3 were 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 claimed 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. On appreciation of the evidence of PWs 1 and 2 and also the contemporaneous document prepared by PW1, court below

was convinced that the offence has been established as against the accused. Consequently, the conviction and sentence followed.

9. Learned counsel appearing for the appellant, assailing the conviction and sentence, pointed out that this appeal will have to succeed on a very short ground. It is pointed out by the learned counsel that detection was on 30.07.2003 and going by the evidence of PW1, he would say that the articles were produced before court on the very same day. This is not true because a perusal of Ext.P5 would show that the articles were actually received in court only on 22.08.2003. No explanation is offered for the considerable delay in producing the articles before court. Learned counsel relied on the decision in **Ramankutty vs. Excise Inspector, Chelannur Range** (2013 (3) KHC 308) and contended that the accused is entitled to acquittal.

10. Learned Public Prosecutor, relying on the evidence of PWs 1 and 2 and also the contemporaneous document, pointed out that the court below has chosen to accept the evidence and has come to the conclusion that the offence has been made out

and the mere fact that there is some delay in producing the articles before court is not sufficient.

11. In the decision in **Ramankutty vs. Excise Inspector, Chelannur Range** (2013 (3) KHC 308), it was held that unexplained delay in producing the contraband before court is fatal to prosecution. Therein the delay was only for one day and the court felt that no satisfactory explanation was offered for the same.

12. In the case on hand, the detection of offence was on 30.07.2003. Even though PW1 would say that the articles seized were produced on the same day, that is belied by the endorsement in Ext.P5 which shows that the properties were received by the court only on 22.08.2003. Therefore, there is nearly one month's delay in producing the article before court. No explanation whatsoever is offered by PW1 or PW2 or the investigating officer.

13. In the light of the principles laid down in the decision cited above, since the delay remains unexplained, consequence will have to follow. This Court is unable to accept the finding of

the court below.

In the result, this appeal is allowed. The conviction and sentence passed by the court below are set aside and it is held that the accused is not guilty of the offence. He stands acquitted of the charges levelled against him. His bail bond shall stand cancelled and he is set at liberty.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.