

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

CRL.A.No. 1292 of 2005 ()

**AGAINST THE JUDGMENT IN SC 98/2001 OF ADDITIONAL DISTRICT & SESSIONS
COURT (FAST TRACK -I), THIRUVANANTHAPURAM DATED 13-07-2005**

**AGAINST THE ORDER/JUDGMENT IN CP 140/2000 OF JUDICIAL FIRST CLASS
MAGISTRATE-I, ATTINGAL**

APPELLANT/ACCUSED:

**ASOKAN, S/O.SUDHAKARAN,
KOVILNADA LAKSHAMVEEDU, PERUMGUZHI DESOM
AZHOOR VILLAGE, CHIRAYINKEEZHU TALUK.**

BY ADV. SRI.G.SUDHEER

RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT. BINDU GOPINATH

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

SHG/

K. ABRAHAM MATHEW, J.

Crl.A.No.1292 of 2005

Dated this the 10th day of March, 2015

J U D G M E N T

The accused in Sessions Case No.98/2001 on the file of the Additional District and Sessions Court (Fast Track-I), Thiruvananthapuram, who has been convicted of the offence under Section 8 of the Abkari Act and sentenced to undergo rigorous imprisonment for 1½ years and to pay a fine of Rs.1 lakh and to undergo rigorous imprisonment for a further period of six months in case he failed to pay the fine, is the appellant. The allegation against him was that on 12.05.2000 at about 10.30 a.m. he was found to be in possession of 1.100 litres of arrack. The prosecution examined two excise officers and an independent witness to prove the occurrence. The learned Sessions Judge came to the conclusion that the prosecution has been successful in proving its case against the appellant and so he convicted him as mentioned above.

2. Heard the learned counsel for the appellant and

the learned Public Prosecutor.

3. At the hearing the main argument of the learned counsel for the appellant was that there is no evidence to prove who took the sample which was examined by the chemical analyst. What was seized from the appellant was a kit containing 11 packets of arrack. The deposition of PW2 and PW3 attached to Excise Range Office, Chirayinkeezhu is to the effect that the kit in which the appellant was allegedly carrying 11 packets of arrack was sealed at the place of occurrence and it was sent to the learned Magistrate with a forwarding note. The forwarding note was not marked. The prosecution has no case that the sample of the seized article was taken at the place of occurrence. No evidence has been adduced by the prosecution to prove that on the request of the Investigating Officer sample was taken at the office of the learned Magistrate, who sent it to the chemical analyst. Ext.P5 report of the analyst shows that the sample was taken in a bottle. So it appears that the sample was taken at the office

of the learned Magistrate. No attempt was made by the Public Prosecutor to adduce evidence with regard to taking of the sample. This is a flaw in the prosecution case. The learned Sessions Judge was not right in convicting the accused.

4. The learned Public Prosecutor requests that the matter may be remanded so that the prosecution may adduce evidence as to the taking of sample. I am satisfied that public interest demands that the case be remanded.

In the result, the appeal is allowed. The order of conviction and the sentence imposed on the appellant are set aside. The matter is remanded to enable the prosecution to adduce evidence as to the taking of sample which was sent for chemical analysis.

Sd/-

**K. ABRAHAM MATHEW
JUDGE**

//True copy//

P.A. TO JUDGE

shg/