

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

CRL.A.No. 1310 of 2005 ()

AGAINST THE JUDGMENT IN SC 718/2000 of ADDITIONAL SESSIONS COURT FOR
ABKARI ACT CASES, KOTTARAKKARA DATED 07-07-2005

APPELLANT(S)/ACCUSED: :

DILEEP KUMAR, AGED 31 YEARS,
S/O. KARUNAKARAN NAIR, LEKSHMIVILASAM VEEDU
NADAKKUNNUMURI, MELILA VILLAGE.

BY ADVS.SMT.NAINA RAJI NAIR
SRI.D.B.BINU

RESPONDENT(S)/COMPLAINANT: :

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA. (CRIME NO.129/99 OF
KOTTARAKKARA POLICE STATION).

R1 BY PUBLIC PROSECUTOR SRI. N. SURESH.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
20-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.Appeal No.1310 of 2005

Dated this the 20th day of November, 2015

JUDGMENT

This appeal is directed against the judgment in S.C.No.718/2000 of the Additional Sessions Judge (Abkari Cases), Kottarakkara. The appellant was charge sheeted in the above case for having committed an offence punishable u/s.55(a) of the Abkari Act. The charge for the indictment was that on 17.2.1999 at 5.30 p.m., the Circle Inspector of Police, Kottarakkara got information that the appellant was conducting sale of arrack on the road going to Kavunkal Ela. When he arrived at the place of occurrence, the appellant was found on the public road with a black Kannas. On seeing the police party, he became perplexed, the Circle Inspector

intercepted him and inspected the black Kannas, he detected 4 liters of arrack in a kannas. The appellant was arrested and the contraband article was seized and entrusted to the Sub Inspector of Police, Kottarakkara, where they registered a crime. After completing investigation, he laid charge before Judicial First Class Magistrate Court-I, Kottarakkara, from there it was committed to Sessions Court, Kollam.

2. In the trial Court, prosecution examined PWs1 to 7 and marked Exts.P1 to P4 documentary evidence. MO1 was admitted as material object. The incriminating circumstances brought out in evidence were denied by the appellant, while questioning him. He did not adduce any defence evidence. After analysing the oral and documentary evidence, the Additional Sessions Court, Kottarakkara convicted the appellant u/s.55(a) of the Abkari Act and sentenced to undergo imprisonment for

two years and fine of ₹1 lakh, in default of payment of fine, imprisonment for six months and acquitted u/s.55(i) of the Abkari Act. Being aggrieved by that, he preferred this appeal.

3. Heard both sides. The learned counsel for the appellant contended that there is shifting of the place of occurrence and PW3 and PW5 gave inconsistent versions about the seizure. The independent witnesses PWs 1 and 2 did not support the seizure of the arrack. When there is shifting of place of occurrence, the alleged seizure itself is doubtful. Hence, the appellant is entitled to get the benefit of doubt.

4. According to the Abkari Act, any Abkari Officer, without a warrant, may arrest any person, if he is found committing an offence under the Act, he shall seize and detain the contraband liquor and register a case against those persons. The prosecution examined PW5, C.I.

of Police, Kottarakkara to prove the alleged violation. The evidence of PW5 shows that on 17.2.1999, while he was conducting law and order duty with PW3 and 4, he got information that one person was selling arrack on the road going from Vettikkavala junction to Kavunkal Ela. Immediately, he reached there and the appellant was found standing on the Panchayat road going to Kavunkal ela, carrying a Kannas. PW5 inspected the Kannas in his hand and detected four liters of arrack in the Kannas, which was marked as MO1. The appellant was arrested and took 180ml arrack as sample and sealed at the place of occurrence in the presence of the independent witnesses. For that, he prepared Ext.P1 seizure mahazar and the independent witnesses, who were present there, attested Ext.P1. The accused and seized article were entrusted to PW7 for further action. During cross examination, he affirmed the place mentioned in Ext.P1 as the place of

occurrence.

5. PW3 accompanied PW5 to the place of occurrence and saw the appellant carrying MO1 and PW5 seized MO1 from his possession. PW3 also admitted the presence of independent witnesses PW1 and PW2 at the time of seizure. PW4 also supported the evidence of PW5. He identified MO1. Analysing the oral evidence of PW3 to PW5, it is found that the Circle Inspector of Police detected the offence and arrested the appellant.

6. PWs 1 and 2 are the independent witnesses to prove the seizure. PW1 deposed that he did not see the seizure of MO1 and the arrest of the appellant. But, he admitted that he put his signature in Ext.P1 at the Police Station, Kottarakkara. PW2 also admitted his signature in Ext.P1. Both witnesses deposed that they signed in a white paper at the Police station. In this context, I have considered the defence story. Their defence contention

was that two persons were arrested by the police on the date of seizure on the allegation that they had consumed liquor. When they were released on bail, the police obtained the signature of PW1 and PW2 and subsequently, the Police converted it as a seizure mahazar. Even though they raised such a defence contention, there is no truth in the suggestive question put forward to the official witnesses. No documents were produced in the trial Court to show that two persons were arrested by the police in connection with the consumption of liquor. Therefore, I fully discard that defence version.

7. When independent witnesses, who attested the seizure mahazar, had subsequently withdrawn, it is not a ground to discard the evidence given by the official witnesses. If mahazar witness had turned hostile, it is not a ground to throw the prosecution case on that ground alone. In such a situation, more scrutiny is necessary in

the evidence of the official witness. Apex Court in Nathusingh v. The State of Madhya Pradesh [AIR 1973 SC 2783] held that the mere fact that the prosecution witnesses are police officers is not enough to discard their evidence, in the absence of evidence of their hostility to the accused. There is no infirmity attached to their testimony on the ground that they belong to Police Force. If the evidence of Police officials is found reliable, the rule of prudence requires that more scrutiny of their evidence is necessary. They had normally interested in the case projected by them, while deposing against the appellant. Analysing the oral and documentary evidence and after careful scrutiny, it is found that their evidence is truthful and it can be reliable.

8. In this backdrop, I have considered the oral evidence of PW6. His evidence shows that on 17.2.1999, he was in GD charge. PW5 entrusted Ext.P1 mahazar and the

contraband articles and the accused at the Police Station. In the absence of Sub Inspector, he received the contraband articles and registered Ext.P2 FIR. Subsequently MO1 and Ext.P1 were entrusted to the Sub Inspector. He admitted that there is minor discrepancy, while recording the place of occurrence as 'Vettikavala Ela' instead of 'Kavunkal Ela', which will not affect the credibility of seizure made by PW5. PW7 deposed that he conducted investigation on 18.2.1991, questioned the witnesses and the contraband articles were produced before Court as per Ext.P3 property list. The seized articles were entrusted to him by PW6. The samples were forwarded to the chemical examiners' lab and Ext.P4 is the chemical analysis report. After completing investigation, he laid charge before Court. In Ext.P4, it is stated that one sealed bottle containing 180ml of a clear and colourless liquid alleged to be "arrack" involved in

Crime No.129/99 of Kottarakkara police station received for chemical analysis. The seal on the bottle was intact and found tallied with the sample seal provided. Therefore, analysing the evidence of the prosecution witness, it is clear that the seized article is arrack and an offence u/s.8(1) and (2) of the Abkari Act is committed.

9. Section 8 of the Kerala Abkari Act is extracted as follows:

"8. (1) Prohibition of manufacture, import, export, transport, transit, possession, storage, sales etc. of arrack.- No person shall manufacture, import, export without permit, transit, possess, store, distribute, bottle or sell arrack in any form.
(2) If any person contravenes any provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to ten years and with fine which shall not be less than one lakh."

Therefore, mere possession of arrack in any form, without any authority, would attract only an offence u/s.8 of the Abkari Act. (Relied decisions Jose v. State of Kerala [2007 (2) KLT 202], Prasanth v. State of Kerala [2002 (1) KLT628]

and Gopan v. State of Kerala [2007 (3) KLT 443]. The Section says that no person shall manufacture, import, export, without permit transit, possess, store, distribute, bottle or sell arrack in any form and if any person contravenes this provision, shall be punishable u/s.8 only.

Therefore, the conviction and sentence passed by the trial Court u/s.55(a) of the Abkari Act is set aside. The appellant is convicted u/s.8 of the Abkari Act. Considering the nature of offence and in view of the decision in Sasikumar v. State of Kerala [2012 (4) KLT 867], he is sentenced as follows:

1) The appellant is sentenced to undergo imprisonment for three months and to pay a fine of ₹1 lakh, in default of payment of fine, simple imprisonment for one month. The period of detention undergone by the appellant shall be set off against the sentence of imprisonment. He is directed to surrender in the

Additional Sessions Court for Abkari Act cases,
Kottarakkara to undergo the modified sentence forthwith,
failing which the learned Additional Sessions Judge shall
issue non bailable warrant against the appellant.

P.D. RAJAN, JUDGE.

acd