

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

CRL.A.No. 1388 of 2005 ()

AGAINST THE JUDGMENT IN SC 83/2005 of ADDL. SESSIONS
FAST TRACK COURT NO.III, PALAKKAD DATED 27-07-2005

APPELLANT(S)/ACCUSED:

1. SANKAR, S/O.CHINNACHAMI, AGED 28 YEARS,
HARIJAN COLONY, MEENAKSHIPURAM.
2. PUKALSELVAN, S/O.GANESH, AGED 31 YEARS,
R.P. COLONY, MEENAKSHIPURAM.

BY ADV. SRI.SOJAN MICHEAL

RESPONDENT(S)/COMPLAINANT:

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

R1 BY ADV. SMT. SEENA RAMAKRISHNAN - PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
28-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.Appeal No.1388 of 2005

Dated this the 28th day of May, 2015

JUDGMENT

This appeal arises out of the judgment in S.C.No.83/2005 of Additional Sessions Judge, Fast Track Court No.III, Palakkad for the offence punishable u/s.55(a) of the Abkari Act.

2. The facts necessary for the indictment were that on 16.9.2002, the Sub Inspector of Police, Kozhinjampara was conducting patrol duty within his jurisdiction, he got information that the accused were possessing foreign liquor and waiting in the shed for going to Meenakshipuram. Immediately, the police party arrived at the place of occurrence and seized the contraband articles, after

preparing a mahazar. The appellants were arrested and reaching at the Police station, registered a crime. After completing investigation, the Sub Inspector of Police filed a final report before Judicial First Class Court, Chittur, which was committed for trial before Sessions Court, Palakkad and finally, the case was transferred to Addl. Sessions Judge, Fast Track Court -III, Palakkad.

3. To prove the allegation, the prosecution examined PWs 1 to 7 and marked Exts.P1 to P5. The material objects Mos 1 to 46 were marked in the trial Court. The incriminating circumstances brought out in evidence were denied by the accused, while questioning them u/s.313 Cr.P.C. They were heard u/s.232 Cr.P.C. They did not adduce any defence evidence. The trial Court, after sifting and weighing the evidence on record, convicted the appellants.

4. The learned counsel appearing for the appellants

contended that there was no proper sampling at the time of seizure. The sample seal was not affixed in the seizure mahazar and the forwarding note. Two packets were seized from two persons, separate cases have to be registered against the appellants and separate sample has to be drawn from each case. The appellants were in possession of excess quantity of foreign liquor, in such a situation, the offence u/s.63 of the Abkari Act alone will attract.

5. While adverting to the arguments, I have perused the evidence in this case. The detection was made by PW3, who was the Sub Inspector of Police, Kozhinjampara. PW3 deposed that while he was conducting patrol duty, got an information that appellants were in possession of foreign liquor for sale and waiting for bus at Meenakshipuram, immediately, he arrived at the place of occurrence with the Police party. He seized Mos 1 to 38,

each containing 180ml of victoria fine brandy. Mos 39 to 42 are 4 bottles taken as sample and which were not sent for chemical examination. MO43 is the bottle having capacity of 1 litre containing silver cup brandy and MO44 is the bottle having capacity of 750ml containing KS 99 XXX Rum. MO 45 and 46 are the newspapers used for covering the bottles which were placed in the bags. The bag, carrying Mos 1 to 44 was not produced before Court. PW3 categorically stated that, after seizing Mos 1 to 44, he prepared Ext.P1 seizure mahazar. The appellants were arrested and reaching at the Police Station, the Police registered Ext.P2 FIR. PW1 supported the evidence of PW3, who is also Asst. Sub Inspector of Police. But, he deposed that only 40 bottles of foreign liquors were seized from the possession of the appellants. PW2 also supported the arrest. Analysing the evidence of PWs 1 to 3, it is found that PW3 seized the contraband articles and

arrested the appellants.

6. The independent witnesses PWs 4 and 5, who were present at the time of preparing Ext.P1, did not support the seizure. But, they admitted signature in Ext.P1. PW7 conducted the investigation in this case. PW6 admitted signature in Ext.P3 mahazar. PW7 arrived at the place of occurrence and prepared Ext.P3 scene mahazar. The seized articles were produced before Court with Ext.P4 forwarding note and sent for chemical examination through Court and Ext.P5 is the chemical analysis report. The person, who filed the final report was not examined in the trial Court, since he is no more. In Ext.P5, it is reported that the test for ethyl alcohol was positive. Ethyl alcohol at the rate of 41.37% was found in the bottles marked as S1 and S2 and 42.37% was found in the bottle marked as S7 and 42.92% was found in the bottle marked as S8. Anyalysing the evidence of PWs 5

and 7, it is found that the sealed packets sent for chemical examination contained ethyl alcohol as per the standard provided for foreign liquor. If that be the position, the prosecution proved that the appellants were in possession of excess quantity of foreign liquor.

7. The learned counsel appearing for the appellants contended that possession of excess quantity of foreign liquor will come u/s.63 of the Abkari Act. This Court in Raman v. State of Kerala [2007(4) KLT 223] held that possession of foreign liquor in excess of prescribed quantity amounts to violation of provisions of Foreign liquor Rules, which will attract punishment under S.63 of the Abkari Act. Here, the appellants were in possession of liquor purchased from Beverages Corporation. It was mentioned in Ext.P1 that the label of beverages corporation was affixed in the bottles. PW3 has not stated that they have previous experience in sale of

foreign liquor. In the absence of any evidence regarding sale, the conviction u/s.55(a) is unsustainable in law.

9. According to Section 63 of the Abkari Act, whoever is guilty of any act or intentional omission in contravention of any of the provisions of this Act, or of any rule or order made under this Act, and not otherwise provided for in this Act shall, on conviction before a Magistrate, be punished for each such wilful act or omission with fine, which may extend to five thousand rupees or with imprisonment for a term which may extend to two years or with both. This Court in Sabu and others v. State of Kerala [ILR 2003(3) Ker.130] held that accused-transporting liquor purchased from Beverages Corporation for a house warming party slightly in excess of the permissible quantity. Such offence comes only under Section 63 of the Act. In this case, the Sub Inspector deposed that all the bottles were purchased from

Beverages Corporation. Therefore, the details furnished in Ext.P1 show that the appellants committed an offence u/s.63 of the Abkari Act alone.

10. In the result, the conviction and sentence under S.55(a) of the Abkari Act are set aside and appellants are acquitted there under. But, appellants are convicted u/s.63 of the Abkari Act and sentenced to pay a fine of ₹ 5,000/-, in default of payment of fine, imprisonment for one month. If any excess amount is deposited by the appellants in the trial Court, it shall be returned to them forthwith.

Crl.Appeal is partly allowed.

P.D. RAJAN, JUDGE.

acd

