

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

CRL.A.No. 1412 of 2005 ()

**AGAINST THE JUDGMENT IN SC 536/2003 of ADDL.SESIONS COURT, FAST TRACK
(ADHOC)-II, KOZHIKODE DATED 01.08.2005**

APPELLANT(S)/ACCUSED:

**NARAYANAN,
S/O.KELAPPAN,
MALAYIL HOUSE,
KEEZHARIYUR,
KOYILANDY TALUK.**

BY ADV. SRI.K.PRAVEEN KUMAR

RESPONDENT(S)/COMPLAINANT & STATE:

**1. THE EXCISE INSPECTOR,
EXCISE RANGE, KOYILANDY.**

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

R1 & R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27-05-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl. Appeal No.1412 of 2005

Dated this the 27th day of May, 2015

JUDGMENT

This appeal is preferred against the conviction and sentence in S.C.536/2003 of the Additional District & Sessions Judge, Fast Track (Adhoc-II), Kozhikode under Section 55(a) of the Abkari Act.

2. The prosecution allegation was that on 29.4.99 at 10.00 am, both accused were found in possession of 4 litres and 3 litres of arrack in two kannas in Kariyattumeethal paramba in the property of one Pattarambath Chandrappan in Koyilandy taluk. They were arrested and contraband articles were seized from the place of occurrence itself. The samples were taken and sealed in the presence of independent witness. Reaching at the Excise Office, occurrence report was registered. After completing investigation, the charge sheet was filed before the Judicial First Class Magistrate, Koyilandy. Subsequently the case against A2 was split up and the case of A1 was committed to Sessions Judge,

Kozhikode.

3. To prove the allegation, prosecution examined PW1 to P4, marked Ext.P1 to P8 and admitted MO1 and MO2 in evidence. The incriminating circumstances brought out in evidence were denied by the appellant while questioning under Section 313 Cr.P.C. The appellant was heard under Section 232 Cr.P.C. and call upon him to enter his defence. He did not adduce any defence evidence. The trial court after sifting and weighing the evidence on record convicted the appellant under Section 55(a) of the Abkari Act.

4. The learned counsel appearing for the appellant contended that there is inordinate delay in conducting the investigation. The signature of the appellant was not obtained in the sample packet, which will affect the credibility of the sample taken. The investigating officer was also not examined.

5. The offence was detected by PW1, Preventive Officer, Excise Range Office, Koyilandy on 29.04.99, who deposed that the appellant and other persons were found

in possession of arrack near the property of Kariyattumeethal paramba near a well. The Excise party obstructed them and inspected the kannas, they detected four and three litres of arrack. The first accused was in possession of 4 litres of arrack and second accused was in possession of 3 litres of arrack. He took 180 ml. each from two bottles and sealed at the place of occurrence and labelled it. The accused were arrested, thereafter prepared Ext.P1 mahazar. MO1 and MO2 were the balance arrack after taking sample. Even though the witnesses were cross-examined by the defence counsel, nothing has been brought out to discredit their oral testimony.

6. The mahazar witness, PW2 admitted that he signed in Ext.P1 mahazar. PW3 also deposed that while working as Village Officer, Keezhariyur on 15.02.03, he prepared Ext.P2 sketch. PW4, another official witness deposed that after arresting the accused, he prepared Ext. P3 arrest memo. Ext.P4 is the occurrence report. The accused were produced before court as per Ext.P5 remand

application. The material objects were produced before court as per Ext.P6. The samples taken were forwarded to the forensic laboratory for chemical examination through court. Ext.P7 is the request and Ext.P8 is the chemical examination result. Investigation was conducted by Excise Inspector who died subsequently. Analyzing the evidence of PW4 and Ext.P8 chemical examination result, it is clear that the samples contained 43.87% and 44.09% of ethyl alcohol. The seal on the bottle was intact and found tallied with the sample seal provided. Analyzing the evidence of the above witness, there is no reason to discard the prosecution evidence. The trial court considered all the legal contentions put forward by the appellant and I find no reason to interfere in the conclusion reached by the trial court.

7. The learned Public Prosecutor contended that sampling was properly done by the investigating officer. The investigating officer expired at the time of examination and his non-examination did not affect the credibility of the prosecution case. Analysing the facts

and circumstance of this case, I am of the opinion that conviction passed by the court below is only to be confirmed.

8. The learned counsel appearing for the appellant contended that no previous criminal antecedence were proved against the appellant. The second accused is absconding. The appellant is now 64 years and is a handicapped person due to an accident. The quantity seized from the appellant was only 4 litres and considering the nature of offence and the character of the offender, I am of the opinion that the appellant is entitled to some leniency.

9. The Apex Court in ***Sasidharan V. State of Kerala 2012(4) KLT 867*** it was held that it is desirable to leave the court free in exercise of judicial discretion in the matter of imposition of fine.

10. In the result, the conviction under Section 55(a) of the Abkari Act is confirmed and sentence is modified as follows;

a)He is sentenced to imprisonment for three months

under Section 55(a) of the Abkari Act.

b)He shall also pay a fine of Rupees one lakh under Section 55(a) of the Abkari Act, in default, imprisonment for 30 days.

c)The period of detention if any, undergone by the appellant during the investigation, inquiry or trial shall be set-off against the term of imprisonment.

This appeal is partly allowed.

STK

**P.D. RAJAN,
JUDGE**