

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

CRL.A.No. 1142 of 2007

AGAINST THE JUDGMENT IN SC 171/2006 of ADDL.SESIONS COURT
(ADHOC)-II, THODUPUZHA DATED 29-05-2007

APPELLANT/ACCUSED:

RAVEENDRAN, S/O.PAPPAN,
MARUTHUMPARAYIL HOUSE, CHELACHUVADU KARA,
KANJIKUZH VILLAGE.

BY ADVS.SRI.C.M.TOMY
SRI.MATHEW SKARIA

RESPONDENT/COMPLAINANT:

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

BY SMT. LILLY LESLIE, PUBLIC PROSECUTOR.

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

P.BHAVADASAN, J.

Crl. Appeal No.1142 OF 2007

Dated this the 11th day of November, 2015.

J U D G M E N T

Facing charge under Section 55(a) of Abkari Act, after trial accused was found guilty of the offence under Section 55(i) of Abkari Act and he was therefore convicted and sentenced to suffer simple imprisonment for six months and to pay a fine of Rs.1 lakh with default clause of simple imprisonment for one month. Set off as per law was allowed.

2. The incident which gave rise to the case occurred on 04.12.2003. At the relevant time, PW1 was functioning as Excise Range Inspector of Idukki Excise Range. On the date of incident, he went for patrol duty as usual. When he was about to reach Government L.P. School, Chelachuvadu, at 5.30 p.m, he happened to see the accused coming along the road carrying a bag with him. Feeling suspicious, he was intercepted and the bag was seized. On examination of the bag, it was found to contain

10 bottles of Power XXX rum and 4 bottles of Majestic brandy each having a capacity of 375 ml. On examination of the two different bottles, the officer concerned namely, PW1 was satisfied that the contents were Indian Made Foreign Liquor. Since other bottles were similar in nature of the one he had opened, he did not venture to examine the contents of the other bottles. He then says about having taken samples of both the sets of bottles and sealed and labeled the same. The label contained the signatures of the attesting witnesses, accused and PW1. The accused was arrested as per Ext.P1 arrest memo and the bottles were numbered as A, B, C, D, E, F, G, H, J, K, M, N, P, Q respectively.

3. PW3 took over the investigation and obtained Ext.P6 scene plan. He recorded the statement of witnesses. Investigation was completed by PW4 who 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, Thodupuzha which made over the case to Additional Sessions Court (Adhoc)-II, Thodupuzha for trial and disposal. The latter court, on receipt of records and on appearance of the accused, framed charge for the offence under Section 55(a) of Abkari Act, to which, the accused pleaded not guilty and claimed to be tried.

5. The prosecution therefore had PWs 1 to 5 examined and Exts.P1 to P7 marked. M.O.s 1 to 4 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 maintained that he is innocent.

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. Impressed by the evidence of PW1 taken along with the contemporaneous document, Ext.P2 mahazar and also the prompt production of accused before court, court below found the

accused guilty of the offence under Section 55(i) of Abkari Act though, as already mentioned, charge was under Section 55(a) of Abkari Act. He was therefore convicted and sentenced as already mentioned. The said conviction and sentence are assailed in this appeal.

9. Learned counsel appearing for the appellant raised a contention that even assuming what the prosecution says is true, neither Section 55(a) nor Section 55(i) can be attracted. There is no case for the prosecution that the accused was in possession of the contraband article in the process of import or export and therefore Section 55(a) cannot be attracted. If Section 55(i) is to be applied, there should be evidence to show that the accused is actually engaged in sale and it is pointed that since neither of the ingredients are established, accused could be said to be in possession of contraband article in excess of the quantity that is permissible and therefore he can be convicted only for the offence under Section 63 of Abkari Act.

10. Learned Public Prosecutor, though attempted to support the findings of the court below, was unable to meet the

contentions made by the learned counsel for the appellant.

11. PW1 is the officer who detected the offence. He speaks about having met the accused on the way while he was on patrol duty and having seized the contraband articles from him. He also speaks about having prepared the seizure mahazar and also labeling and sampling of the article. The two independent witnesses namely, PWs 2 and 5 turned hostile to the prosecution. So the seizure solely rests upon the evidence of PW1. PW1 gets ample support from Ext.P2 mahazahr which is a contemporaneous document prepared at the time of detection and that gives credit to the prosecution version. Further, prompt production of accused, articles and documents before court ensures that the prosecution version is true. The court below was therefore perfectly justified in accepting the evidence of PW1 and also holding that the accused was in possession of the contraband articles.

12. The next question arises for consideration is what is the offence committed by the accused. Section 55(a) of Abkari Act contemplates possession during the course of import or export of

contraband article. The prosecution has no case in the case on hand that the accused was in possession of the article while importing and exporting of the same. If that be so, Section 55(a) can have no application.

13. Coming to Section 55(i) of Abkari Act, that contemplates a situation where the accused is actually engaged in sale or store for sale liquor. There is no material before court to show that either the accused was found selling the contraband article or that he had been storing the contraband article for the purpose of sale. In other words, necessary ingredients to attract Section 55(i) is not at all available in the case on hand. Therefore, the said section also can have no application. At best it could be said that the accused was in possession of contraband article in excess of the quantity that is permissible. If that be so, only Section 63 of Abkari Act can apply.

In the result, this appeal is partly allowed. The conviction under Section 55(i) of Abkari Act is altered to Section 63 of Abkari Act and the sentence awarded by the court below is set aside and instead the accused is sentenced to pay a fine of

Rs.5,000/- in default of payment of which to suffer simple imprisonment for one month.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.