

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

CRL.A.No. 1785 of 2004 (B)

AGAINST THE JUDGMENT IN SC 822/2000 of ADDL.SESSIONS COURT
(ADHOC-I), KASARAGOD, DATED 30-09-2004.

APPELLANT(S)/ACCUSED:

T.KUNHIKANNAN, S/O.T.KORAN, AGED 37 YEARS,
NEAR KUNDUCHI L.P.SCHOOL,
BEDAKAM VILLAGE.

BY ADV. SRI.T.B.SHAJIMON

RESPONDENT(S) :

STATE OF KERALA,
REPRESENTED BY THE EXCISE INSPECTOR,
KASARAGOD, REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SS

K. RAMAKRISHNAN, J.

Crl. Appeal No.1785 of 2004

Dated this the 3rd day of November, 2015

JUDGMENT

Accused in S.C.No.822/2000 on the file of the Additional Sessions Court (Ad-Hoc-I), Kasaragod, is the appellant herein. The appellant was charge-sheeted by the Excise Inspector, Kasaragod Excise Range in Crime No.33/1999 of that range under Section 55(a) of Abkari Act (ought to be under Section 8(1) and (2) of the Abkari Act).

2. The case of the prosecution in nut shell was that, on 18.07.1999, at about 1.00 p.m., the accused was found to be in possession 122 packets of arrack of 100 m.l. each manufactured in State of Karnataka and found transitting the same along the lane behind the Ayurvedic Shop of Chindan Nair Smaraka Ayurveda Vydyasala, situated in Bovikanam, Muliya Village in Kasaragod Taluk, in violation of the provisions of Abkari Act and thereby he had committed the offence punishable under Section 55(a) of the Kerala Abkari Act.

3. After investigation, final report was filed before the Judicial First Class Magistrate Court, Kasaragod, and the case was taken on file as C.P.No.80/2000. Thereafter it was committed to the Sessions Court, Kasaragod by the learned magistrate under Section 209 of the Code of Criminal Procedure (hereinafter called the Code). After committal, the Sessions Court, Kasaragod had taken cognizance of the case as S.C.No.822/2000 and it was originally made over to Assistant Sessions Court, Kasaragod, for disposal. Thereafter it was withdrawn and made over to Additional Sessions Court (Ad-Hoc-I), Kasaragod for disposal by the Sessions Judge.

4. When the accused appeared before the court below, after hearing both sides, charge under Section 55(a) of Abkari Act was framed and the same was read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 3 were examined and Exts.P1 to P7, MO1, MO2 and MO3 series

were marked on their side. After closure of the prosecution evidence, the accused was questioned under Section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution case. He had further stated that, no article was seized from his possession and he has been falsely implicated in the case. Since the evidence in this case did not warrant an acquittal under Section 232 of the Code of Criminal Procedure, the Additional Sessions Judge directed the accused to enter on his defence. DW1 was examined on the side of the accused to prove his case. After considering the evidence on record, the court below found the appellant guilty under Section 55(a) of the Abkari Act and convicted him thereunder and sentenced him to undergo rigorous imprisonment for six months and also to pay a fine of ₹1,00,000/-, in default to undergo rigorous imprisonment for three months more. Set off was allowed for the period of detention already undergone by him in this case. Aggrieved

by the same, the present appeal has been preferred by the appellant/ accused before the court below.

5. Heard Sri.T.B. Shajimon, counsel appearing for the appellant and Sri. Jibu P. Thomas, learned Public Prosecutor appearing for the State.

6. The counsel for the appellant submitted that the evidence of PW1 will go to show that he had signed only a blank paper and perusal of Ext.P1 mahazar will go to show that it was prepared later on a blank signed paper which probabilise the case of PW1, that it was not prepared at the place from where the alleged seizure was effected. Further the evidence of DW1 will go to show that there was no such incident occurred as according to the prosecution, the incident happened in front of his shop, that also will go to show that, the incident had not occurred as claimed by the prosecution and he is entitled to get acquittal as the prosecution has not proved the case against the accused beyond reasonable doubt.

7. On the other hand, learned Public Prosecutor submitted that the evidence adduced on the side of the prosecution proved the guilt of the accused beyond reasonable doubt and the court below was perfectly justified in convicting the appellant for the offence alleged and no interference is called for.

8. The case of the prosecution as emerged from the prosecution witnesses was as follows:

On 18.07.1999 at about 12.45 p.m., PW2 the preventive officer along with PW3 Excise Inspector were doing patrol duty and when they reached the place of occurrence, they saw the accused coming with MO1 sack and on seeing the excise party, he tried to go away from the place. So they stopped him and on examination of the plastic sack, they saw it contained 122 plastic packets of 100 ml., each with Description of Karnataka State Manufactured liquid with its emblem and he opened three packets and examined the contents and he satisfied that it

was arrack. He had taken the liquid from the opened packet in a bottle as sample and sealed the same and affixed label containing the signature of witnesses, himself and the accused. He had sealed the MO1 sack along with remaining MO2 series packets and sealed the same and affixed label containing the signature of the witnesses, himself and the accused and seized the same as per Ext.P1 mahazar. He arrested the accused and prepared arrest memo and thereafter came to excise office along with the accused and the articles seized and produced the accused and the articles seized before PW3/the Excise Inspector who registered Ext.P3 crime and occurrence report as crime No.33/1999 against the accused under Section 55(a) of the Abkari Act and he prepared Ext.P4 property list and produced the accused before the court on the same day along with remand report. He produced the articles also before the court along with property list. He sent Ext.P5 forwarding note with a request to send the sample for

chemical analysis and sample was sent from court and Ext.P7 chemical analysis report obtained, which shows that the sample contained 31.42% by volume of ethyl alcohol. He conducted the investigation. He questioned the witnesses and recorded their statements. He collected Ext.P7 chemical analysis report and produced the same before court. He completed the investigation and submitted final report.

9. PW1 is the independent witnesses to the seizure. Though he had admitted the signature, he denied having seen the seizure and arrest of the accused. According to him, he signed a blank paper near the place of occurrence as requested by the Excise Officials. He had also admitted in his cross examination by the Public Prosecutor that, the signatures seen in Ext.P2 label and on MO1 sack is also his signature. So that will go to show that he had signed Ext.P1 as well as Ext.P2 from the place of occurrence itself and he is now trying to help the accused

and that was the reason why he is not supporting the case of the prosecution.

10. PW2 is the detection officer. He had deposed that on that day, he was doing patrol duty along with other excise officials and when they reached the place of occurrence, he saw the accused coming with MO1 sack in his hand and on seeing the excise party, he got perplexed and tried to move away from that place. So he stopped him and on examination of the sack, he found MO2 and MO3 series packets containing the seal of Karnataka Government and he had taken the liquid from MO3 series covers and examined the same and satisfied that it was arrack. He took the liquid in those three packets in a bottle as sample and the same was sealed and he affixed label containing the signature of himself and the witnesses and he had put the remaining covers in MO1 sack itself and sealed the same and affixed label in the same manner and seized the same as per Ext.P1 mahazar. Thereafter he arrested the accused

and came to excise office and produced the accused and the contraband articles and the documents prepared before PW3. Though he was cross examined at length, nothing was brought out to discredit his evidence in this aspect. There is no enmity brought out to give any false evidence against the accused as well.

11. DW1 was examined on the side of the accused to prove that no such incident occurred on that day. But a reading of his evidence will go to show that he know the accused and he came to court to give evidence as requested by the accused. But he did not know the purpose for which he was signed the papers and the accused only told that he need answer the questions put to him. In the cross examination, he had admitted that if anything happened behind the shop he cannot see and he cannot deny as to whether any incident happened as mentioned in this case from behind the shop on that day. So the court below was perfectly justified in coming to the conclusion

that the evidence of DW1 is not helpful to prove the case of false implication of the accused in a case like this. So under the circumstances, the court below was perfectly justified in coming to the conclusion that prosecution has proved the case beyond reasonable doubt that the accused was arrested along with MOs 1, 2 and 3 series on that day, which is said to be arrack.

12. Further it is seen from the evidence of PW3 that the articles produced before court on the same day and Ext.P5 forwarding note contains the specimen seal impression of the seal used for sealing the sample and other articles. Further the fact that, the articles seized was arrack and the articles contains the emblem of Karnataka Government etc., was not in dispute. So it is clear from the evidence that the article seized was arrack intended to be sold in Karnataka and as such court below was perfectly justified in convicting the appellant for the offence under Section 55(a) of the Abkari Act (ought to be under Section 8

(1) and (2) of the Abkari Act).

13. The counsel for the appellant submitted that the sentence imposed is harsh. The court below had sentenced him to undergo rigorous imprisonment for 6 months also to pay a fine of ₹1,00,000/-, in default to undergo rigorous imprisonment for three months more.

14. The persons who are committing the offence under the Abkari Act are doing the same knowing that it is offence and irrespective of the consequences of their act on innocent people who are consuming such arrack. Showing undue leniency in such cases will only give a wrong signal and it will cause loss of confidence to the public in the criminal justice delivery system also. Court below had shown maximum leniency in imposing the sentence as well. I do not find any reason to interfere with the sentence imposed also, as it appears to be just and proper as maximum leniency has been shown. So the appeal lacks merit and the same is liable to be dismissed.

In the result, the appeal fails and the same is hereby dismissed. The order of conviction and sentence passed by the court below against the appellant under Section 55(a) of the Abkari Act (ought to be under Section 8 (1) and (2) of the Abkari Act) are hereby confirmed.

Office is directed to communicate this judgment to the court below at the earliest.

Sd/-
K. Ramakrishnan, Judge

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P.A. to Judge

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