

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. 1462 of 2005 ()

**AGAINST THE JUDGMENT IN SC 241/2003 of ADDL.SESIONS COURT,
FAST TRACK-II, ALAPPUZHA DATED 19-08-2005**

APPELLANT/ACCUSED:

**GOPI, AGED 51 YEARS,
S/O.VELUTHAKUNJU,
SAJI VILASAM, KANDANADMURI,
KANDANAD VILLAGE,
ALAPPUZHA DISTRICT.**

BY ADV. SRI.C.S.MANU

RESPONDENT/COMPLAINANT:

**THE STATE OF KERALA, REPRESENTED BY THE
EXCISE INSPECTOR, CHENGANNOOR EXCISE RANGE
NOTICE TO WHOM MAY BE SERVED ON THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

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.1462 of 2005

Dated this the 27th day of May, 2015

JUDGMENT

This appeal is preferred against the conviction and sentence in S.C.241/2003 of Additional Sessions Judge, Fast Track-II, Alappuzha for offence under Section 55(a) of the Abkari Act. The prosecution allegation was that on 26.02.2001 at 12.10 pm, the Excise Preventive Officer, Excise Circle Office, Chengannoor was conducting patrol duty within his jurisdiction, appellant was found in possession of 750 ml. of arrack in front of Kanjiramood Valiyachankavu, Near R.K.V. Junction, Pandanadu Village. He was arrested with the contraband articles and after investigation, they laid a charge before Judicial First Class Magistrate-II, Chengannoor from where the case was committed to Sessions Judge, Alappuzha.

2. To substantiate the penal liability, prosecution examined PW1 to PW6 and marked Ext.P1 to P5 as documentary evidence. MO1 and MO2 were marked as material objects. The incriminating circumstances brought out in evidence were denied by the appellant while questioning him. Appellant was also heard under Section 232 Cr.P.C. For

substantiating the defence contention, DW1 was examined with the trial court. After sifting and weighing the evidence on record, trial court convicted the appellant under Section 55 (a) of the Abkari Act.

3. The learned counsel appearing for the appellant contended that there was no independent corroboration to prove the alleged seizure. Forwarding note was not produced before the trial court to show that the contraband articles were forwarded to the chemical examination laboratory as requested. Moreover the evidence of DW1 was not considered, since the arrest was at the house of the appellant. There was previous enmity against one Vidyadharan, owner of a wire cut brick factory which was not considered by the trial court.

4. The learned Public Prosecutor strongly resisted the above contention and contended that there is no illegality. The search and seizure was properly proved in the trial court. No reason to interfere in the findings of the trial court.

5. The appellant was arrested by PW1 on the basis of the allegation that while he was conducting patrol duty on 26.02.2001, appellant was found in possession of 750 ml. of arrack at the place of occurrence. PW1 stated that on seeing the Excise party, appellant was found perplexed and upon that

suspicion, he stopped the vehicle and inspected MO1 bottle. During inspection it is revealed that MO1 contained 750 ml. of arrack. He tasted and smelled it. He prepared Ext.P1 mahazar and arrested the appellant as per Ext.P2 arrest memo. PW2 who accompanied PW1 supported the story stated by PW1. He also attested Ext.P1 mahazar.

6. The independent witnesses present there did not support the seizure. PW3, who is a native of Pandanadu deposed that he put his signature in Ext.P1 and Ext.P2 arrest memo and signed in the label of MO1. PW4 is also another independent witness put signature in Ext.P1 and P2.

7. PW5, Excise Range Inspector deposed that on the basis of seized article, he registered Crime 11/2001 in the Chengannur Excise Range Office. The seized articles were produced before court as per Ext.P4 property list. Ext.P3 is the occurrence report. The seized articles were forwarded to the chemical examiner's laboratory and obtained Ext.P5 report. PW1 in his evidence stated that he took sample from the place of occurrence and sealed in the presence of independent witness. Ext.P5, chemical examination result shows that ethyl alcohol was detected on the sample. Analysing the evidence in this case, it is found that the seizure of arrack from the

possession of appellant was proved.

8. Appellant examined DW1 who deposed that appellant was arrested from his house. Even though, DW1 was examined, that itself is not a sufficient ground to discard the evidence of the official witness. The Apex Court in **Modan Singh V. State of Rajasthan AIR 1978 SC 1511** held that, if the evidence of the investigating officer who recovered the material object is convincing, the evidence as to the recovery need not be rejected on the ground that seizure witness does not support the prosecution version. Even though, PW1 and PW2 did not support the seizure, they admitted the signature in Ext.P1. The evidence of PW1 and PW2 is sufficient to corroborate the alleged seizure. Therefore, the conviction passed by the trial court is only be confirmed.

9. The quantity seized from the possession of the appellant was only 750 ml., while granting sentence, the mitigating factors are to be considered. The question of adequate sentence is always a difficult task. The appellant, in this case, was in possession of 750 ml of arrack and therefore harsh punishment is unnecessary in this matter. No criminal antecedence were reported by the prosecution against the appellant. If that be the position, the conviction of the

appellant u/s. 55(a) of the Abkari Act is confirmed and appellant is sentenced as follows:

- a) The appellant to undergo rigorous imprisonment for three months under Section 55(a) of the Abkari Act.
- b) He is also sentenced to a fine of Rupees one lakh under Section 55(a), in default of payment of fine, simple imprisonment for 15 days.
- c) The period of detention if any, undergone by him 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**

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P.A. TO JUDGE