

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. 1497 of 2005 ()

AGAINST THE JUDGMENT IN SC 408/2004 of ADDL.DISTRICT AND SESSINS
COURT FAST TRACK (ADHOC-I), KOZHIKODE DATED 25-08-2005

APPELLANT(S)/ACCUSED::

KANARAN, S/O. POKKEN,
THIRUVALLUR AMSOM DESOM, VADAKARA TALUK.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT(S)/COMPLAINANT & STATE::

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

R1 BY ADV. SRI. GITHESH.R - 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.1497 of 2005

Dated this the 28th day of May, 2015

JUDGMENT

This appeal is preferred against the conviction and sentence in S.C.No.408/2004 of the Additional District and Session Judge, Fast Track (Adhoc-I), Kozhikode dated 25.8.2005 for offence punishable u/s.55(a) of the Abkari Act. The appellant was convicted and sentenced thereunder.

2. The facts considered for the indictment were that on 21.8.2001 at 8.20 p.m. while the Preventive Officer, Kozhikode Special Squad and party were conducting patrol duty, the accused was found in possession of 5 litres of arrack in front of the house of one Melenkandi Ibrahim at Thiruvallur amsom desom. The accused was arrested and the

contraband articles were seized, reaching at the Excise Range Office, Vadakara, they registered a case. After completing investigation, laid charge before Judicial First Class Magistrate Court, Vadakara, from where the case was committed to Sessions Court, Kozhikode, which was made over to the Asst. Sessions Judge, Vadakara and later made over to the Addl.District and Sessions Judge, Fast Track (Adhoc-II), Kozhikode.

3. To prove the offence, prosecution examined PWs 1 to 6 and marked Exts.P1 to P7. MO1 was also admitted in evidence. The incriminating circumstances brought out in evidence were denied by the accused, while questioning u/s.313 Cr.P.C. He was also heard u/s.232 Cr.P.C. He did not adduce any defence evidence. The trial Court, after analysing the evidence, convicted the accused.

4. The learned counsel appearing for the appellant contended that there was inordinate delay in filing the

final report. When the final report was not filed as stipulated under Section 50 of the Abkari Act, the conviction is unsustainable in law. He relied the decision reported in Surendran and another v. State of Kerala [2013 (3) KHC 780].

5. The seizure of arrack from the possession of the appellant was proved by the evidence of PW1, Preventive Officer, Calicut Excise Enforcement and Anti Narcotic Special Squad and his party, while conducting patrol duty within his jurisdiction. At about 8.20 p.m., when they reached in front of the house of Melekandi Ibrahim, appellant was found carrying a five litres plastic can. On seeing the Excise Party, he became perplexed, they intercepted him and inspected the can and detected it as illicit arrack. Appellant was arrested from the spot itself and took 180ml in a sample bottle and sealed. The arrack and the kannas were seized after preparing Ext.P2

seizure mahazar. MO1 is the Kannas. Appellant and the materials were produced before the Excise Range Office, Vadakara. To impeach the accuracy and credibility and the general value of the evidence given in chief examination, PW1 was cross examined by the defence counsel in the trial Court. No discrepancies were detected or no suppression of facts were found, while cross examining him. Hence, his evidence is reliable.

6. PW2, who was present there at the time of seizure, supported the seizure and identified MO1. The independent witness, PW3, who was present there, attested Ext.P2 seizure mahazar and the label in MO1, but, he denied the detection as spoken to the Excise officials. PW4 prepared Ext.P3 sketch. On 21.8.2001 at 11 p.m., PW1 entrusted the contraband articles and the appellant to PW5. On the basis of that, PW5 registered Ext.P4 occurrence report and prepared Ext.P5 property list and

Ext.P6 forwarding note. The contraband articles were forwarded to chemical examiner's lab for examination through Court and from the analysis report, it is found that the sample was contained ethyl alcohol.

7. According to S.50 of the Abkari Act, every investigation into the offence under the Act shall be completed without unnecessary delay. As soon as investigation is completed the abkari officer shall forward it to the Magistrate empowered to take cognizance of the offence on a police report u/s.173(2) of the Code of Criminal Procedure. From the aforesaid direction, it is clear that as soon as the investigation is completed, the officer-in-charge of the police station or the Abkari Officer shall forward a report to the empowered Magistrate, in a form prescribed by the State Government to take cognizance of the offence on a police report, a report in accordance with sub section (2) of Section 173 of

Code of Criminal Procedure, 1973. It is true that the occurrence was reported on 21.8.2001 and the complaint was filed in the Court on 5.3.2004. The appellant was apprehended on 21.8.2001 and released on bail on 19.09.2001. But, the case was committed on 29.04.2004. The examination report shows that after examination on 17.6.2002, the chemical examination report was forwarded to Judicial First Class Magistrate Court, Vadakara. Subsequently, no action was taken by the Excise officials to file a final report before Judicial First Class Court, Vadakara. The delay was not properly explained by the Excise officials. The learned Public Prosecutor submitted that it was due to pressure of official work, the final report was not filed in time. Even though such submission was made by the learned Public Prosecutor, no report was received from Excise officials to that effect.

8. In Surendran's case (supra), it is held as follows:

"Section 50 of the Abkari Act mandates that every investigation of the offence under this Act shall be completed without necessary delay. In this case the occurrence was on 06/06/1998. Chemical examiner submitted report on 03/12/1998. The final report should have been submitted before the Court immediately thereafter. It is seen that the final report was submitted only on 05/10/2000 i.e., after a period of one year and nine months. The investigation was completed on receipt of the chemical examiner's report. There is no reason stated nor any explanation offered for not submitting the final report within a reasonable time after receipt of chemical examination report. PW6 took charge as the Sub Inspector of Police on 01/08/2000, only thereafter, the final report was submitted on 05/10/2000. It is not known for what purpose the records were kept in the Police Station without submitting final report in time. In the facts and circumstances of the case, the conviction entered and sentence passed by the Court below in the proved circumstances cannot be sustained."

9. Appellant has no allegation that the Abkari Officers had violated any of the provisions of the Act. Proper sampling was done at the time of seizure of arrack. This Court in Dominic v. State of Kerala [1989(1) KLT 601] held as follows:

"Fanciful doubts of lingering suspicions have

no place in a criminal trial. The Supreme Court has time and time again, indicated, "dangers of exaggerated devotion to rule of benefit of doubt, at the expense of social defence". Sir Carlton Allen said:

".....if our ratio is extended indefinitely then comes a point, when the whole system of justice is broken down and society left in a state of chaos".

While it is better to let a hundred guilty escape than punish an innocent, letting a hundred escape is not the ideal. Petitioners were found in conscious and exclusive possession of articles which by smell was identified as ganja. This identification is corroborated by chemical examination. The contemporaneous occurrence report, lends further assurance. Having regard to the circumstances aforementioned, the conviction is proper. Sentence, surely, is not harsh."

Considering the nature of offence and facts and circumstances of the case, the conviction u/s.55(a) of the Abkari Act is confirmed, but taking a lenient view, the sentence of imprisonment is reduced to one month and directed to pay a fine of ₹1 lakh, in default of payment of fine, imprisonment for one month. Relied decision in Sasikumar v. State of Kerala [(2012(4) KLT867)]. The period

of detention undergone by the appellant shall be set off during trial, investigation and enquiry.

The Cr.l.Appeal is partly allowed.

P.D. RAJAN, JUDGE.

acd

in which it is held as follows: