

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

CRL.A.No. 1223 of 2007 (E)

-----  
AGAINST THE JUDGMENT IN SC 332/2006 of ADDL.SESIONS COURT FAST  
TRACK - III (ADHOC), MANJERI DATED 29-06-2007

APPELLANT/ACCUSED:

-----

RAMACHANDRAN, S/O. NEELANDAN,  
MANIYATTAMMAL HOUSE, CHEMMINIKKARA, ELAMKOOR,  
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENT/STATE:

-----

THE STATE OF KERALA, REPRESENTED BY  
THE EXCISE INSPECTOR, MANJERI EXCISE RANGE -  
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM, KOCHI-31.

BY SMT. S. HYMA, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON  
16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.BHAVADASAN, J.**

-----  
**Crl. Appeal No.1223 OF 2007**  
-----

**Dated this the 16<sup>th</sup> day of September, 2015.**

**J U D G M E N T**

The accused who suffered conviction for the offence punishable under Section 8(1) of Abkari Act and was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1 lakh with default clause of simple imprisonment for six months is the appellant.

2. The incident is said to have been taken place on 25.07.2003. While PWs 1 and 2 along with other officers were on patrol duty, they happened to see the accused carrying a can with him. When seeing the excise officials, he panicked and tried to escape. He was intercepted and the can in his hand was seized. On examination of the contents of the can, it was seen to contain 3 litres of arrack. He prepared Ext.P1 arrest memo and arrested the accused. He also prepared arrest notice which was served on his brother as per Ext.P2. He would say that he had taken 200 ml of arrack in a bottle having a capacity of 375 ml as

sample from the contraband article seized. He had tied the bottle with a piece of cloth and sealed the same. The rest was also tied and sealed. On both the sample as well as the balance quantity, PW1 would say that he affixed his personal seal. He also said that he affixed the label containing the signature of the accused, witnesses and himself in the bottle and the can. He claims to have prepared Ext.P3 mahazar at the place. He had the accused and the articles seized with the document drawn up by him produced before the Manjeri Excise Range Office and entrusted the same to the Inspector. PW5, on the accused and the articles being produced, registered crime as per Ext.P4 occurrence report. He prepared Ext.P5 property list and Ext.P6 forwarding note. He had the accused and the records produced before court on the very same day itself.

3. Investigation was taken over by PW6. He recorded the statement of witnesses and procured Ext.P7 chemical analysis report. He went to the place of occurrence. Exts.P8 and P9 are the portions of statements recorded by him. He completed the investigation and laid charge before court.

4. The Judicial First Class Magistrate Court, Manjeri before whom final report was laid took cognizance of the offences and finding that the offences are exclusively triable by a Court of Sessions, committed the case to Sessions Court, Manjeri under Section 209 Cr.P.C. The said court made over the case to Assistant Sessions Court, Manjeri for trial and disposal. Subsequently, the District and Sessions Court withdrew the case from that court and made over the case to Additional Sessions Fast Track Court-III (Ad hoc), Manjeri. The latter court, on receipt of records and on appearance of the accused and also on hearing both sides, framed charge for the offence punishable under Section 8(1) of Abkari Act. To the charge, accused pleaded not guilty and claimed to be tried.

5. The prosecution therefore had PWs 1 to 6 examined and Exts.P1 to P9 marked. M.O.1 was 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. He denied of having done

any illegal activities.

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. The court below, mainly relying on the evidence of PWs 1 and 2 and also Ext.P3 found the prosecution case to be convincing enough and came to the conclusion that the offence has been established. Consequently, the conviction and sentence followed.

9. Assailing the conviction and sentence, learned counsel appearing for the appellant pointed out that the evidence of PWs 1 and 2 alone taken along with Ext.P3 have been relied on by the court below to find the accused guilty. There is no evidence from independent sources regarding the acts said to have been done by the excise officers. It will be dangerous to rely only on the testimony of PWs 1 and 2 which is inconsistent and contradictory when viewed in the light of ExtP3, to convict the accused. Learned counsel went on to point out that the counsel has no quarrel with the proposition that if the evidence of

PWs 1 and 2 is found to be blemish, conviction can be based on the same. But that should be above board. If any suspicion is cast, that should go to the benefit of the accused. In the case on hand, a reading of the evidence of PWs 1 and 2 would show that they are inconsistent with the contents of Ext.P3 and that would make the prosecution case weak. It was essential for the prosecution to adduce evidence from independent sources. Since that has not been done, it is claimed that the conviction and sentence cannot stand.

10. Learned Public Prosecutor, on the other hand, contended that true there are minor inconsistencies and contradictions in the evidence of PWs 1 and 2. But that is only natural. They are deposing after four years of incident and it is imprudent on the part of the court to expect a mathematical precision in the deposition given after four years of the incident. Regarding the evidence as a whole, they had given a uniform version and most of the versions get support from Ext.P3.

11. Learned Public Prosecutor reminded this Court that Ext.P3 is a contemporaneous document and that is a gist of what

has actually happened in the place. It is significant to notice, according to the learned Public Prosecutor, that the accused and the articles were produced before court at the earliest which further gives strength to the prosecution. These aspects have been considered by the court below which found the prosecution case to be convincing enough. In short, the contention of the learned Public Prosecutor is that there are no grounds made out to interfere with the conviction and sentence passed by the court below.

12. After having heard the learned counsel appearing for the appellant, learned Public Prosecutor and also after having perused the records, this Court feels that there is some substance in the submission made by the learned Public Prosecutor. True, the prosecution case solely rests as of now on the evidence of PWs 1 and 2. It is also true that they are excise officers. They would say that while they were on patrol duty, they happened to see the accused coming in the opposite direction. It is pointed out that while PW1 would say that accused was seen coming along with a black can, PW2 only says that he was coming along

with a can in his hand. PWs 1 and 2 then say that seeing them even though the accused tried to escape, he was prevented from doing so and the can in his possession was seized. Both PWs 1 and 2 are uniform in their version that two persons who were coming along the way were made as witnesses to the seizure. On examination of the contents of the can, it turned out to be arrack. PW1 says that he prepared the arrest memo, Ext.P1 and arrested the accused and arrest notice was given to his brother as per Ext.P2. He then speaks about having taken sample of 200 ml in a bottle having a capacity of 375 ml. He then speaks about having secured the bottle and labeled the same. He also says the same thing about the can seized from the accused. PW1 further says that he prepared Ext.P3 seizure mahazar at the place of incident and he returned to the police station.

13. Almost same is the version given by PW2. There is also slight inconsistency regarding the seal affixed by PW1 etc. While PW1 would say that he had affixed his personal seal, PW2 only says that seal was affixed not that personal seal of PW1 was affixed.

14. PWs 3 and 4 are the two independent witnesses. Of course, as usual, they betrayed the prosecution. However, it is interesting to note that PW3 admitted his signature in all the documents produced by the prosecution. He also admitted that he was at the place of incident at the relevant time.

15. Ext.P3 is the seizure mahazar alleged to have been prepared by PW1 at the place of occurrence. It is a contemporaneous document containing the entire details of the incident. Learned counsel appearing for the appellant contended that Ext.P3 does not mention that personal seal of PW1 was affixed and also there is an insertion of 'സാക്ഷികൾ' in the document which would show that it is a doubtful document. Learned counsel went on to point out that PWs 1 and 2 were overenthusiastic to give a foolproof version of the incident which is far beyond the contents of Ext.P3. Under these circumstances, according to the learned counsel, it may not be proper to accept the evidence of the prosecution.

16. As rightly pointed out by the learned Public Prosecutor, inconsistencies if at all there is any between the evidence of

PWs 1 and 2 are too insignificant to be taken note of. It is natural that such inconsistencies will arise when witnesses are deposed after a long time. Their version may slightly differ with the contents of Ext.P3. However, PWs 1 and 2 have a version that on the sample taken as well as on the rest of the articles labeled after taking sample they were secured and labels were affixed on them containing the signature of the accused, PW1 and the witnesses. It is more significant to notice that prompt production of the accused and the articles gives further strength to the prosecution case.

17. It is seldom that independent witnesses support the prosecution. It is not the law that the evidence of the detecting officer has to be viewed with suspicion. His evidence has to be appreciated as a whole and attempt should be made to find out whether there is ring of truth. The detecting officer has no grind against the accused or he has no ill motive and there is nothing to discard his evidence. So also prompt production of accused and articles further fortifies his stand. If one is to insist for independent corroborative evidence, it may never come through.

18. On re-appreciation of the evidence, this Court finds no reason to take a different view regarding the evidence furnished by PWs 1 and 2. If that be so, the incident as rightly noticed by the court below stands proved.

19. Faced with the above situation, learned counsel appearing for the accused pointed out that the sentence imposed is too harsh and it is disproportionate to the quantity seized. There is no history of accused having involved in any such incident.

20. There seems to be considerable force in the above submission. The quantity seized is only 3 litres and there is no previous history of the accused having been involved in any such incident. This is not to say that the matter has to be viewed lightly. But only to mention that sentence should be proportionate to the quantity seized. It is felt that the sentence imposed is too harsh and it needs interference.

Therefore, while holding the conviction for the offence under Section 8(1) of the Abkari Act, the sentence imposed by the court below is set aside and instead the accused is sentenced to suffer

rigorous imprisonment for six months and to pay a fine of Rs.1 lakh in default of payment of which to suffer rigorous imprisonment for three months. Set off as per law is allowed.

With the above modification, this appeal is disposed of.

Sd/-

**P.BHAVADASAN  
JUDGE**

smp

// True Copy //

P.A to Judge.