

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

CRL.A.No. 1990 of 2005 ()

AGAINST THE JUDGMENT IN SC 730/2000 of ADDITIONAL SESSIONS JUDGE, FOR
ABKARI ACT CASES, KOTTARAKKARA DATED 22-10-2005

AGAINST THE JUDGMENT IN CP 71/1999 of J.M.F.C.-I, KOTTARAKKARA

APPELLANT/ACCUSED:

BABU
S/O. UNNUNNI, PALAVILA PUTHENVEETIL, MULAVANA MURI
MULAVANA VILLAGE.

BY ADVS.SRI.BINU GEORGE
SMT.HEMALATHA

RESPONDENT(S)/COMPLAINANT:

THE STATE OF KERALA
BY THE DIRECTOR GENERAL OF KPROSECUTION
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. PUBLIC PROSECUTOR SEENA RAMAKRISHNAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24-07-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.D.RAJAN, J

.....
Crl. Appeal No. 1990 of 2005
.....

Dated 24th July, 2015

JUDGMENT

The appellant, who is the accused in S.C.No.730 of 2000 of Additional Sessions Court (Abkari), Kottarakkara challenges the judgment of conviction and sentence under Section 55(a) and (i) of the Abkari Act. The appellant was convicted by the Additional Sessions Court and sentenced to undergo imprisonment for two years and to pay fine of Rs.1,00,000/- and in default of payment of fine, to undergo rigorous imprisonment for three months each under Section 55 (a) and (i) of the Abkari Act. Set off was allowed by the trial court.

2. The facts necessary for the indictment are that on 18.11.1998 at 6.30 pm, appellant was found in possession of 5 litres of arrack in a can on the way to Sivamangalam temple at Karuveli by S.I of Police, Ezhukone. He was arrested, the contraband articles were seized from him, reaching the police station, S.I registered a crime No.316 of 1998 of Ezhukone police station and after completing the investigation, laid charge before Judicial First Class Magistrate I, Kottarakkara. Subsequently, the case was committed to Sessions Court.

From there, it was made over to the Special Court for Abkari cases. To substantiate the allegation, prosecution examined PW1 to PW4 and marked Exts.P1 to P5. The material objects were marked as MO1 and MO2 in the trial court. After analysing the oral and documentary evidence, trial court convicted the appellant.

3. The learned counsel appearing for the appellant contended that there is no independent corroboration to the seizure of arrack from the possession of the appellant. No notice was served on the relatives of the appellant at the time of his arrest. PW1 denied his signature in Ext.P1 mahazar. The evidence of official witness alone is not sufficient to convict the appellant and he is entitled to get the benefit of doubt. There is no evidence to prove the alleged sale of arrack.

4. In this context, I have verified the nature of seizure made by S.I of Police, Ezhukone in this case. His oral evidence shows that on 18.11.1998, he was conducting patrol duty within his jurisdiction, at that time he got information that appellant was conducting sale of arrack near Sivamangalam police station. Immediately, he proceeded to the place of occurrence with the police party. PW3 was also present at the

time of seizure of arrack. When he reached at the place of occurrence, appellant was found carrying arrack in a jerry can. He intercepted the appellant and inspected the jerry can and detected the arrack in it. He prepared Ext.P1 seizure mahazar in the presence of independent witness. On the basis of that, he registered Ext.P2 F.I.R. The seized articles were produced before court on 19.11.1998 as per Ext.P3. Ext.P4 is the arrest memo. He took the sample at the place of occurrence itself. It was sent to the Chemical Examiner's lab through court. Ext.P5 is the chemical analysis report. He also seized MO2 currencies from the possession of the appellant. The above evidence was supported by PW3. Analysing the oral evidence of PW3 and PW4, it is clear that they arrived at the place of occurrence and seized arrack on that date.

5. The independent witnesses PW1 and PW2 did not support the prosecution case. PW1 denied his signature in Ext.P1. But PW2 admitted that he signed in Ext.P1 mahazar. The denial of signature in Ext.P1 itself is not a ground to discard the oral evidence of PW3 and PW4, who are the official witnesses. In **Niranjal Ishwarlal Joshi and another V.State of Maharashtra**(1994 CrI.LJ 300) held that if panch

witness turned hostile, the court cannot throw out the prosecution case on that ground alone, the court has to then scrutinize the evidence far more rigorously. It has to undertake a minute and rigorous examination as to whether the material is credible and strong enough to sustain a conviction. On a close perusal of the evidence of PW4, I find no illegality in the procedure followed by him, at the place of occurrence he sealed the seized article and produced before court on the next day itself. Ext.P5 is the chemical examination result, which shows that ethyl alcohol was detected at 29.22%. PW4 collected 150 ml as sample and sent it for chemical examination through court. When Mos are labelled with signatures of PW1 and PW4 and specifically mentioned in Ext.P1 seizure mahazar, I find no illegality in admitting the evidence of PW4. Trial court considered this point and convicted the appellant, but there is no evidence with regard to sale of arrack. Therefore, the conviction under Section 55(i) of the Abkari Act is unsustainable in law.

6. This court in **Gopan V. State of Kerala** (2007(3) KLT 443) held that mere possession of arrack in any way without any authority would only attract Section 8 of the Abkari Act.

This was reiterated in **Kelukutty V. State of Kerala** (2009 (4) KLT 286).

7. In the result, the conviction and sentence under Section 55(a) and (i) are set aside. Appellant is convicted under Section 8(1) and (2) of Abkari Act and sentenced to imprisonment for three months and to pay fine of Rs.1,00,000/-, in default of payment of fine, to undergo imprisonment for 15 days. The period of detention undergone by the appellant shall be set off against the terms of imprisonment during trial, investigation or enquiry.

P.D.RAJAN, JUDGE

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