

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

Crl.MC.No. 18 of 2015 ()

**CP 41/2014 of CHIEF JUDICIAL MAGISTRATE, KALEPETTA
CRIME NO. 650/2013 OF KALPETTA POLICE STATION, WAYANAD DISTRICT**

PETITIONERS/ACCUSED NOS. 1 & 2:

- 1. ABHILASH A.C., AGED 34 YEARS
S/O.CHANDRASEKHARAN, ANTHUPARAMBIL
HOUSE, KUPPADI, SULTHAN BATHERY, WAYANADU DISTRICT.**
- 2. P.B.PRABHAKARAN, AGED 54 YEARS
S/O.PATTANADAN APPU, THULASIPRABHA HOUSE
MANATHANA VILLAGE, THALASSERY TALUK, KANNUR DISTRICT.**

BY ADV. SRI.MATHEW KURIAKOSE

RESPONDENT/STATE:

**STATE OF KERALA
(CRIME NO.650/2013 OF KALPETTA POLICE STATION)
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

R1 BY PUBLIC PROSECUTOR SMT. S. HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11-03-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONERS' EXHIBITS

- ANNEXURE-A:** CERTIFIED COPY OF THE CHARGE SHEET CUM FINAL REPORT IN CRIME NO.650/2013 OF KALPETTA POLICE STATION, WAYANADU DISTRICT.
- ANNEXURE-B:** CERTIFIED COPY OF THE LIST OF PROPERTY SENT TO THE MAGISTRATE IN CRIME NO.650/2013 OF KALPETTA POLICE STATION.
- ANNEXURE-C:** CERTIFIED COPY OF THE FORWARDING NOTE IN CRIME NO.650/2013 OF KALPETTA POLICE STATION.
- ANNEXURE-D:** CERTIFIED COPY OF THE CHEMICAL ANALYSIS REPORT IN CRIME NO.650/2013 OF KALPETTA POLICE STATION.
- ANNEXURE-E:** CERTIFIED COPY OF THE FIRST INFORMATION REPORT WITH FIRST INFORMATION STATEMENT IN CRIME NO.650/2013 OF KALPETTA POLICE STATION, WAYANAD DISTRICT
- ANNEXURE-F:** CERTIFIED COPY OF THE SEARCH LIST IN CRIME NO.650/2013 OF KALPETTA POLICE STATION

RESPONDENT'S EXHIBITS

NIL

// TRUE COPY // P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.18 of 2015

Dated this the 11th day of March, 2015

O R D E R

The petitioners herein are the two accused in C.P.No.41/2014 before Chief Judicial Magistrate Court, Kalpetta. They are being prosecuted under Section 57(a) of the Kerala Abkari Act. The 2nd petitioner herein is the licensee of the toddy shop No.7 of Kalpetta Excise Range, and the first accused is the salesman. On 02.09.2013 the Sub Inspector of Police, Kalpetta, made inspection in the said toddy shop, and collected two samples from the toddy shop, found in a bucket. The two samples were sent for analysis. On examination in the laboratory, Diazepam was detected in one of the samples, but it was not detected in the other sample. On the basis of the report regarding one of the samples the police initiated prosecution against the petitioners. That prosecution is sought to be quashed on the ground that the two reports of chemical examination are contradictory. The petitioners rely on **Rajappan and Another**

v. State of Kerala [2012(2)KHC 657], wherein two sets of samples were taken for analysis out of which one was found containing Ethyl Alcohol, but the other was not containing any quantity of Ethyl Alcohol. In the said case, this Court allowed the request of the accused, and quashed the prosecution.

2. In this case, the police made an attempt to explain that samples were in fact collected from two buckets, and that the sample taken from one of the buckets was found containing Diazepam on examination. But this explanation cannot be believed at all, because there are clear materials like mahazar and other documents showing that the two samples were in fact collected by the police from one bucket. If so, it is not explained how one of the samples was found containing Diazepam on examination, and the other was not found containing any quantity of Diazepam. The prosecution has no explanation as to how such reports came on analysis. Thus it is really unbelievable that the sample taken from the toddy shop of the petitioners was found containing Diazepam. I am definite that the

prosecution cannot reach anywhere successfully, if it proceeds on the basis of the materials now in the hands of the prosecution, indicating collection of two samples from one bucket containing toddy, and chemical analysis giving contradictory reports regarding the presence of Diazepam. It is a very genuine and serious doubt, the benefit of which will definitely go to the accused during trial. In fact it is not merely a doubt. Dereliction of duty on the part of the police officer, who detected the offence is very clear. Due to the mistake or dereliction on his part, the petitioners are getting orders quashing the prosecution. Any way, I find on a perusal of the entire case records that there is no scope to proceed in this case under Section 57(a) of the Kerala Abkari Act. If such a prosecution proceeds, on the basis of the contradictory reports regarding presence of Diazepam in the samples taken from one bucket containing toddy, it will definitely be an abuse of legal process, because the ultimate result of trial will be a definite finding against the prosecution, and against the officer, who detected the offence.

In the result, this petition is allowed. The prosecution against the petitioners herein in C.P.No.14/2014 of the Chief Judicial Magistrate Court, Kalpetta will stand quashed under Section 482 Cr.P.C.

Sd/-
P. UBAID, JUDGE

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