

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

CrI.MC.No. 6901 of 2015 ()

**CC.NO. 606/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - I, PONNANI,
MALAPPURAM DISTRICT**

CRIME NO. 39/2015 OF MALAPPURAM E.E & A.N.S.S. , MALAPPURAM DISTRICT

PETITIONERS/2ND ACCUSED:

**VISHNUDAS, S/O.VISWANATHAN,
MADAMPATH HOUSE, NARIPARAMBA,
KALADY, PONNANI.**

BY ADV. SRI.E.NARAYANAN

RESPONDENT/STATE :

**STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM
(EXCISE INSPECTOR, PONNANI RANGE).**

BY PUBLIC PROSECUTOR SMT. MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 02-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEX-A1** TRUE COPY OF CERTIFICATE BEARING NO.7044 OF 2014 DATED 11-12-2014 PREPARED BY THE ASSISTANT CHEMICAL EXAMINER
- ANNEX-A2** TRUE COPY OF CRIME AND OCCURANCE REPORT PREPARED BY THE EXCISE INSPECTOR E.E. & A.N.S.S,MALAPURAM
- ANNEX-A3** CERTIFIED COPY OF FINAL REPORT DATED 10-7-2015 IN C.C.606/2015 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT PONNANI
- ANNEX-A4** TRUE COPY OF RECEIPT NO.3465/2015 DATED 9-6-2015 ISSUED BY THE ASSISTANT CHEMICAL EXAMINER
- ANNEX-A5** CERTIFIED COPY OF THE ANALYTICAL DATA ISSUED BY THE ASSISTANT CHEMICAL EXAMINER DATED 9-6-2015.

RESPONDENT(S)' ANNEXURES: NIL

/TRUE COPY/

P.S.TO JUDGE

sts

B. KEMAL PASHA, J.

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CRL.M.C. No.6901 of 2015
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Dated this the 2nd day of November, 2015

ORDER

Petitioner is the accused in C.C.No.606/15 of the Judicial First Class Magistrate's Court, Ponnani.

2. Samples were drawn from the toddy kept for sale at the toddy shop of the petitioner. When 'A' sample was subjected to chemical analysis, it was found containing 8.16% of ethyl alcohol and consequently Annexure A3 final report was filed alleging an offence under Section 57(a) of the Abkari Act, as against the petitioner. Subsequently, when 'B' sample was subjected to chemical analysis, it was found that the said sample contained only 5.79% of ethyl alcohol, which is less than the permissible quantity.

3. According to the petitioner, in the light of the

examination of the second sample made through court, the prosecution will not lie for the offence under Section 57(a) of the Abkari Act as against the petitioner.

4. It is true that as contained in Section 13 of the Prevention of Food Adulteration Act, there is no provision in the Abkari Act or Rules that the report of such an examination of the second part of the sample will supersede the examination of the first sample. At the same time, it is a fact that when there is variation with regard to the contents of ethyl alcohol in the examination of the first sample and second sample, the prosecution has got a burden to explain as to how the said variation has occurred. When the examination of the second sample proves that quantity of ethyl alcohol is less than the permissible quantity, the matter becomes much more worse. It is for the prosecution to prove and establish that the examination of the second sample was bad in law or there is some thing wrong with the examination of the second sample.

5. It is true that the second sample was also drawn at the time of seizure. When there is a total variation in the second sample and especially when the quantity of ethyl alcohol in the second sample was proved to be less than the permissible quantity, a successful prosecution cannot be there, on the basis of the examination result of the first sample alone.

6. If, as a matter of fact, the second examination of the second sample has no implication on the prosecution, there could not have been any provision for drawing the second sample and subjecting it for examination. Therefore, in this case, on the examination of the second sample it is proved that the examination of the first sample was wrong or there were material differences between the contents of these two samples. Either the examination of first sample was wrong or there were procedural irregularities in drawing the samples. In both the cases, the benefit of such doubt should go to the accused and not to the prosecution.

7. Therefore, much discussion is not required to conclude that even when there is no provision in the Abkri Act or Rules that the second report will supersede the report of analysis of the first sample, the prosecution cannot canvass for a conviction of the petitioner. In such a case, there is no meaning in proceeding with the matter further as against the petitioner and therefore, all further proceedings in C.C.No.606/2015 of the Judicial First Class Magistrate's Court, Ponnani, based on Annexure A3 Final Report, are liable to be quashed.

In the result, this CrI.M.C. is allowed and all further proceedings in C.C.No.606/2015 of the Judicial First Class Magistrate's Court, Ponnani, based on Annexure A3 Final Report, are hereby quashed.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge