**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN**

**TUESDAY, THE 09TH DAY OF JUNE 2020 / 19TH JYAISHTA, 1942**

**CRL.A.No.698 OF 2005**

**AGAINST THE ORDER/JUDGMENT IN SC 92/2002 DATED 19-03-2005 OF ADDITIONAL DISTRICT & SESSIONS JUDGE (ADHOC) FAST TRACT COURT - III, PATHANAMTHITTA**

**APPELLANT:**

**RAJU JOHN**
**S/O JOHN,**
**MURUPPEL PUTHEN VEEDU,**
**THODUVAKKADUKARA,**
**EZHAMKULAM VILLAGE,**
**ADOOR.**

**BY ADVS.**
**SRI.JOHN BRITTO**
**SRI.C.A.RAJEEV**

**RESPONDENT:**

**STATE OF KERALA**
**REP BY THE EXCISE INSPECTOR,**
**ADOOR OR NO.17/99 OF THE EXCISE,**
**ADOOR THROUGH THE PUBLIC PROSECUTOR,**
**HIGH COURT OF KERALA,**
**ERNAKULAM.**

**R1 BY PUBLIC PROSECUTOR**

**OTHER PRESENT:**

**SR.PP. B.JAYASURYA**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09.06.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**P.V.KUNHIKRISHNAN, J.**

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Crl.A. No.698 of 2005

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Dated this the 9th day of June, 2020

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

The above appeal is filed by the accused in Sessions Case No.92 of 2002 on the file of Additional District & Sessions Judge (Adhoc) Fast Tack Court No. III, Pathanamthitta. The Excise Inspector, Adoor Excise Range, filed the charge sheet against the accused, alleging offences punishable under Section 8(1) & 55(a) of the Abkari Act.

2. The prosecution case is that, on 16.04.1999, at 5.30 P.M., the Preventive Officer of Adoor Excise range office and the excise party found the accused transporting 20 polythene covers having capacity of 180 ml each containing arrack through the Panchayat road leading from Alappadu Junction to SAP Plantation, Mangattu Muri, Adoor Taluk. Thus it is alleged that the accused committed to offence.

3. To substantiate the case, the prosecution examined PW1 to PW6. Exhibits P1 to P8 are the exhibits marked on the side of the prosecution. MO1 is the material objects. On going through the evidence and documents, the trial court found that, the accused committed the offences under Section 8(2) read with 8(1) of the Abkari Act. He is sentenced to undergo simple imprisonment for two and half years and to pay a fine of Rs.1 Lakh and in default of payment of fine, the accused is directed to undergo simple imprisonment for four months. Aggrieved by the conviction and sentence, this Criminal Appeal is filed.

4. Heard the counsel for the appellant and the Public Prosecutor.

5. The counsel for the appellant submitted that, in this case, forwarding note is not produced or marked by the prosecution. According to the counsel, if the prosecution want to rely on Ext. P8 chemical examination report, the Prosecution has to prove all the links starting from seizure of the contraband property, till it reaches in

the hands of the analyst. Hence, the counsel submitted that, the accused is entitled the benefit of doubts. The Public Prosecutor submitted that, even though the forwarding note is not produced, there is oral and document evidence to show that, the seized article reached in the hands of the analyst. Therefore, simply because the forwarding note is not produced, the prosecution case can not be thrown out completely. He also submitted that the thondy list along with the properties are produced on the next day of the seizure itself. This will show that the prosecution case is genuine.

6. After hearing both sides, the points for consideration is as to whether the accused committed the offence punishable under Section 8(2) read with 8(1) of the Abkari Act.

7. Admittedly, the forwarding note is not produced and marked by the prosecution in this case. It is true that, the contraband articles were produced before the Court on the next day of the seizure itself. But forwarding note is an important document in Abkari cases, because

the specimen seal will be affixed in the forwarding note. This will prove that, the seized articles reached in the hands of the analyst. This Court in ***Gireesh @ Manoj v. State of Kerala [2019 KHC 655], Vijayan @ Pattalam Vijayan and Another v. State of Kerala [2018 (2) KHC 814]*** and in ***Prakasan and Another v. State of Kerala [2016 KHC 96]*** explained the importance of forwarding note. The relevant portions in the judgment in ***Gireesh @ Manoj v. State of Kerala [2019 KHC 655]*** is extracted hereunder.

> *"14. There is another lacuna in the prosecution case. The copy of the forwarding note prepared by PW5 for sending the samples for chemical analysis was not marked in evidence. The forwarding note is expected to contain the specimen impression of the seal used for sealing the bottles containing the samples. In the absence of the forwarding note marked in evidence, it cannot be found that the prosecution has proved beyond reasonable doubt that the very same samples taken at the spot of the occurrence had reached the chemical examiner for analysis in a tamper proof condition (See Prakasan v. State of Kerala (2016 KHC 96 : 2016 (1) KLD 311 : 2016 (1) KHC SN 40 : 2016 (1) KLT SN 96) and Gopalan v. State of Kerala (2016 KHC 541 : 2016 (2) KLD 469 : 2016 (3) KLT SN 16))."*

In the light of the above dictum laid down by this Court, I think that the non production of the forwarding note in this case is fatal to the prosecution.

8. Moreover, in the seizure mahazer also, the specimen signature affixed in the sample is not seen. This will also show that, the prosecution is not able to prove the links starting from seizure of the contraband, till it reaches in the hands of the analyst. Moreover, the alleged seizure of the contraband in this the case was on 16.04.1999 and the final report after investigation was filed only on 29.06.2001. There is no explanation for the prosecution for the delay in conducting the investigation in this case. As far as the Abkari case is concerned, after the search and seizure, there is nothing more to investigate. In such situation long delay in completing the investigation is a matter to be explained by the prosecution. This Court in ***Kumaran v. State of Kerala [2016 (4) KLT 718], Chandran v. State [2016 (4) KLT 727] and Mukundan v. State of Kerala [2016 (3) KLT 532]*** explained the above principle. The

relevant portions of the judgment in ***Kumaran v. State of Kerala [2016 (4) KLT 718]*** is extracted hereunder.

> *" 6. The learned counsel for the revision petitioner has argued that since there was inordinate and unexplained delay in conducting the investigation, the revision petitioner is entitled to benefit of doubt. The learned counsel for the revision petitioner relied on the decision in Krishnan H. v. state of Kerala [2015 (1) KHC 822] to buttress his argument. In Krishnan (supra), the Court held that long delay in conducting the investigation, in the absence of CRL.R.P.No.1357 of 2014 -3- sufficient explanation, is fatal to the prosecution. In this case, even though the incident was on 24.7.2007, the investigation was conducted and the final report was filed before the Court only on 13.1.2009. PW2 was the investigating officer. PW2 started the investigation of this case only on 15.2.2008. No explanation had been given by the prosecution as to why there was long delay in conducting the investigation and filing the final report before the Court. Since there was long and unexplained delay in conducting the investigation and filing the final report in this case, the revision petitioner is entitled to benefit of doubt, particularly when the*

*quantity of the contraband involved in this case is only two litres."*

9. In the light of the above facts discussed above, I think the accused in this case is entitled to benefit of doubt.

Hence, this Criminal Appeal is allowed. The conviction and sentence imposed on the appellant/accused as per the judgment dated 19.03.2005 of the Additional District & Sessions Judge (Adhoc) Fast Tack Court No. III, Pathanamthitta is set aside. The appellant is set at liberty. Bail bond, if any, executed by the appellant is hereby cancelled.

**(Sd/-)**
**P.V.KUNHIKRISHNAN**
**JUDGE**

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// True Copy // PA To Judge