IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 09TH DAY OF DECEMBER 2020 / 18TH AGRAHAYANA, 1942

CRL.A.No.777 OF 2007

AGAINST THE ORDER/JUDGMENT IN SC 591/2003 DATED 10-04-2007 OF ADDITIONAL SESSIONS COURT (ADHOC)-II, KOLLAM

AGAINST THE ORDER/JUDGMENT IN CP 55/2002 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II, KOLLAM

APPELLANT/ACCUSED:

PRASANNAN, S/O. KUMARAN,
ATTUKAL VEEDU, THEKKEVILA CHERRI,
MUNDAKKAL VILLAGE, KOLLAM TALUK.

BY ADV. SRI.JOHNSON GOMEZ

RESPONDENT/COMPLAINANT:

THE STATE OF KERALA
REP. BY THE PUBLIC PROSECUTION,
HIGH COURT OF KERALA,
THROUGH THE EXCISE INSPECTOR,
EXCISE RANGE,KOLLAM.

SMT. V. SREEJA,PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The appellant was convicted and sentenced by the court below under Section 8(2) of the Abkari Act.

2. The prosecution allegation is that on 05.03.1999 at about 3 p.m., the appellant was found in possession of 2 litres of arrack, in contravention of the provisions of the Abakari Act.

3. Heard.

4. The learned counsel for the appellant has argued that since no forwarding note was marked and proved in this case, the appellant is entitled to be acquitted.

5. It appears that no forwarding note was marked and proved in this case.

6. In Sasidharan v. State of Kerala [2007 (1) KLT 720], the Court observed thus:

> "Without the link evidence of actual sampling by the concerned clerk of the court by drawing sample from the can and sending the same in a sealed packet to the Chemical Examiner with a specimen seal sent separately for tamper proof despatch, the Prosecution cannot be held to have brought home the offence against the appellant."

7. In Ravi v. State of Kerala [2011 (3) KLT 353], the Division Bench of this Court held that the prosecution in a case under the Abkari Act could succeed only if it is shown that the contraband liquor which was allegedly seized from the accused ultimately reached the hands of the chemical examiner by change of hands in a tamper-proof condition.

8. Since no forwarding note was marked and proved in this case, the prosecution could not establish the tamper-proof despatch of the sample to the laboratory. In the said circumstances, there is no satisfactory link evidence to show that it was the same sample which was drawn from the contraband seized from the appellant, which eventually reached the hands of the chemical examiner by change of hands in a tamper-proof condition. Consequently, there is no link evidence to connect the appellant with the sample analysed in the laboratory. In the said circumstances, the conviction and sentence passed by the court below on the basis of Ext.P3 certificate of chemical analysis cannot be sustained.

In the result, this criminal appeal stands allowed, setting aside the conviction and sentence passed by

the court below and the appellant stands acquitted. The bail bond of the appellant stands discharged.

Sd/-

B.SUDHEENDRA KUMAR

JUDGE

Nkr/09.12.2020