IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 17TH DAY OF DECEMBER 2020 / 26TH AGRAHAYANA, 1942

CRL.A.No.1459 OF 2006

AGAINST THE JUDGMENT IN SC NO.279/2002 DATED 19-07-2006 ON THE FILE OF THE ADDITIONAL SESSIONS JUDGE (ADHOC)III, KASARAGOD

APPELLANT/ACCUSED:

K.R.BABU, S/O.RAGHAVAN NAIR,
KANA VEEDU, GOKATAVU, CHITTARIKKAL.

BY ADVS.
SMT.C.G.PREETHA
SMT.MARY BEENA JOSEPH

RESPONDENT/COMPLAINANT:

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

OTHER PRESENT:

R1 BY SR.PP- SRI. K.B.UDAYAKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 17th day of December 2020

...

The appellant is the accused in S.C.No.279 of 2002 on the file of the Additional Sessions Judge (Adhoc) III, Kasaragod.

2. The above case is charge sheeted by the Additional Sub Inspector of Police, Manjeshwar Police Station against the appellant alleging offence punishable under Section 55(a) of the Abkari Act.

3. The prosecution case is that, the accused was arrested with an air bag containing 150 packets of Karnataka arrack, each containing 100 ml, on 24.7.2001 at about 5 p.m. According to the prosecution, as per Ext.P2 seizure mahazar, the air bag and the contraband were seized.

4. To substantiate the case, prosecution examined PW1 to PW5. Exhibits P1 to P7 are the documents marked on the side of the prosecution. MO1 and MO2 are the material objects.

5. After going through the evidence and documents, the trial court found that, the accused committed the offence under Section 55(a) of the Abkari Act. The accused is sentenced to undergo simple imprisonment for four years and to pay a fine of Rs.1 lakh. In default of payment of fine, the accused is directed to undergo simple imprisonment for six months.

6. Aggrieved by the above conviction and sentence, this criminal appeal is filed.

7. Heard.

8. A perusal of Ext.P2 seizure mahazar will show that, 4 items were seized from the

possession of the accused. Item No.1 is the arrack packets each containing 100 ml. Item No.2 is the sample taken from item No.1. Item No.3 is 6 packets of arrack. Item No.4 is the air bag. When PW1 and PW2 who are detecting officer and the accompanying officer examined before the court, they deposed that, the air bag is lost. The court below without considering the same as serious, observed that, that is not a material fact. I cannot accept with the lower court. When the prosecution alleges that, the contraband arrack packets were in an air bag and the air bag is also seized as per the seizure mahazar, it is the duty of the prosecution to produce the air bag. If that is not produced, according to me, it will create doubt about the prosecution case itself. Moreover, the contraband is allegedly seized on 24.7.2001.

As per Ext.P6 forwarding note, it was dispatched on 25.7.2001 to the Analyst. But the same was received by the Analyst only on 14.8.2001 and that also through one police constable bearing No.459. That Police Constable is not examined. The thondy clerk is also not examined. It is the duty of the prosecution to prove all the links starting from the seizure of the contraband article till it reaches in the hands of the Analyst. In this case, admittedly, the thondy clerk and the police constable through whom the sample was forwarded to the Analyst are not examined. In such circumstances, according to me, the appellant is entitled the benefit of doubt in this case. This point was considered by this Court in several judgments. In **Madhavan Vs. State of Kerala** (2019 (4) KLT 18), this Court observed like this:

> *"19. Mere seizure of a bottle allegedly containing liquor from the possession of the appellant is not sufficient to prove the offence alleged against him. When the prosecution relies upon the report of chemical analysis in respect of the sample sent for analysis to prove the offence alleged against the accused, it can succeed only if it is shown that the liquid which was examined by the chemical examiner was the very same sample drawn from the liquid seized. The prosecution has to prove all the links starting from the seizure of the sample till the same reached the hands of the chemical examiner.*
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> *Mere production of a laboratory report that the sample tested was liquor cannot be conclusive proof by itself. The sample seized and that tested have to be co-related [See Vijay Pandey v. State of Uttar Pradesh: 2019 (10) SCALE 129 : 2019 (3) KLT OnLine 3028 (SC)]."*

Since there is unexplained delay in reaching the sample before the Analyst in this case, in the light of the above authoritative judgments, the appellant is entitled the benefit of doubt.

Hence, this criminal appeal is allowed. The conviction and sentence imposed on the

appellant as per the judgment dated 19.7.2006 in S.C.No.279 of 2002 on the file of the Additional Sessions Judge (Adhoc)III, Kasaragod are set aside. The appellant is set at liberty. Bail bond, if any, executed by the appellant is cancelled.

Sd/-

P.V.KUNHIKRISHNAN

pkk **JUDGE**