IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 07TH DAY OF DECEMBER 2020 / 16TH AGRAHAYANA, 1942

CRL.A.No.1513 OF 2006

AGAINST THE JUDGMENT IN SC 477/2001 DATED 03-07-2006 OF THE ADDITIONAL SESSIONS JUDGE (ABKARI), KOTTARAKKARA

AGAINST THE JUDGMENT IN CP 253/2000 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II,KOTTARAKKARA

APPELLANT/ACCUSED:

KUTTAN PILLAI, S/O. MADHAVAN PILLAI,
PARVATHISADANATHIL,
VELIYAM KIZHAKKEKARA MURI,
VELIYAM VILLAGE.

BY ADV. SRI.D.JAYACHANDRAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

SRI.K.B.UDAYAKUMAR, SR.PP

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 7th day of December 2020

The appellant is the accused in S.C.No.477/2001 on the file of the Additional Sessions Judge (Abkari), Kottarakkara. The above case is chargesheeted by the Excise Inspector, Chadayamangalam Excise Range against the appellant alleging offence punishable under Section 8(1) and (2) of the Abkari Act.

2. The prosecution case is that on 29.12.1998 at 5.30 pm, the accused was found in possession for sale and in transit of 3 litres of arrack in a 5 litre black jerry can. Hence the accused committed the offence.

3. To substantiate the case, the prosecution examined PW1 to PW4. Exts.P1 to P6 are also marked on the side of the prosecution. DW1 is the defence witness. MO1 is the material object.

4. After going through the evidence and the documents, the trial court found that the accused committed the offence under Section 55(a) r/w 8(1) and (2) of the Abkari Act. He was sentenced to undergo simple imprisonment for two years and to pay a fine of Rs.1,00,000/- under Section 55(a) r/w 8(1) of the Abkari Act. In default of payment of fine the accused is directed to undergo simple imprisonment for three months. No separate

sentence was imposed under Section 8(2) of the Abkari Act. Aggrieved by the conviction and sentence, this Criminal Appeal is filed.

5. Heard.

6. Admittedly, the forwarding note is not marked in this case. The importance of forwarding note is considered by this Court in several decisions. If a forwarding note is not there, it will be difficult to find out whether the seized article reached in the hands of the analyst.

7. In abkari cases, forwarding note is important because the specimen seal used by the detecting officer will find a place in it. It is the fundamental duty of the prosecution to prove all the links starting from seizure of the contraband till it reaches in the hands of the analyst. Forwarding note is one of the links to prove the prosecution case in abkari cases.

8. This Court in several decisions considered the relevancy of the forwarding note. Some of the decisions are **Gireesh @ Manoj v. State of Kerala (2019(4) KLT 79), Vijayan @ Pattalam Vijayan and another v. State of Kerala (2018 (2) KHC 814)** and **Prakasan and another v. State of Kerala (2016 KHC 96)**. The relevant portion of the judgment in **Gireesh**'s case (supra) 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))."

9. In the light of the above authoritative judgments, it is clear that the non production of the forwarding note is fatal to the prosecution. That itself can be a ground for acquitting the accused.

Hence this Criminal Appeal is allowed. The conviction and the sentence imposed on the appellant as per the judgment dated 3.7.2006 in S.C.No.477/2001 of the Additional Sessions Judge (Abkari), Kottarakkara is set aside. The appellant is set at liberty. The bail bond, if any, executed by the appellant is hereby cancelled.

Sd/-

P.V.KUNHIKRISHNAN

ab **JUDGE**