IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 28TH DAY OF SEPTEMBER 2020 / 6TH ASWINA, 1942

CRL.A.No.1924 OF 2005

AGAINST THE ORDER/JUDGMENT IN SC 344/2005 DATED 13-10-2005 OF ADDITIONAL SESSIONS COURT (ADHOC)-II, THALASSERY

AGAINST THE ORDER/JUDGMENT IN CP 256/2004 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,MATTANNUR

APPELLANT/S:

K.T.SASI
S/O KUNHAN, MUKHAPARAMBIL,
CHAVASSERI AMSOM, DESOM,,
THALASSERY TALUK.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENT/S:

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

R1 BY PUBLIC PROSECUTOR

OTHER PRESENT:

SRI.K.B.UDAYAKUMAR, SR.GP

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28.09.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.
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Crl.A. No.1924 of 2005
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Dated this the 28th day of September, 2020

J U D G M E N T

Appellant is the accused in S. C. No. 344/05 on the file of Additional Sessions Judge, Fast Track (Adhoc) No.II, Thalassery. The above case is charge sheeted by the Excise Inspector, Mattannur against the appellant alleging offence punishable under Section 55(a) and 8 (1) of the Kerala Abkari Act.

2. The prosecution case is that, on 13.08.2002 at 6.15 a.m., the Excise Inspector and party detected $2^1/_2$ liters of arrack in a plastic cannas and according to the prosecution the appellant was in possession of the same.

3. To substantiate the case, the prosecution examined PW1 to PW4. Exts. P1 to P5 are the exhibits marked on the side of the prosecution.

4. On going through the evidence and documents, the trial court found that, the accused committed the offence under Section 8(2) of the Abkari Act. The appellant/accused was sentenced to undergo simple imprisonment for a period of one year and also to pay a fine of Rs.1,00,000/-. In default of payment of fine, the accused was directed to undergo simple imprisonment for a further period of one month. Aggrieved by the conviction and sentence, this Crl. Appeal is filed.

5. Heard shri. Grashious Kuriakose, learned Senior counsel for the appellant and learned Public Prosecutor.

6. The learned Senior counsel for the appellant submitted that, the prosecution in this case is not maintainable for the simple reason that, PW4 the Excise Inspector, Kannur has no jurisdiction to investigate this case. According to the counsel, the offence was detected within the jurisdiction of the Excise Inspector, Mattannur. The Excise Inspector, Kannur investigated and submitted final report in this case. The learned Senior counsel submitted that, in the light of the judgment of this Court in

Balachandran v. State of Kerala 2020 (4) KLT 137. The prosecution case is unsustainable.

7. The learned Public Prosecutor submitted that, in the light of the evidence of PW1 to PW4 and Exts P1 to P5, the offence is made out in this case. The learned Public Prosecutor submitted that, there is nothing to interfere with the conviction and sentenced imposed by the lower court.

8. The point for consideration in this appeal is whether the appellant/accused committed the offence under Section 8(2) of the Abkari Act.

9. Admittedly, PW1 detected the offence in this case. He is the Excise Inspector of Thalassery Range. Admittedly, the seizure was within the jurisdiction of Excise Range, Mattannur. PW4 is the Excise Inspector, who conducted the investigation in this case. He is the Excise Inspector, Anti Narcotic Special Squad, Kannur. This Court in ***Balachandran's case*** (Supra) found that, the Excise Department Officers not below the rank of Excise Inspector can file a final report under Section 50 only, if the detection is within the area for which they are appointed. The Para

No. 14 and 15 of the above judgment is extracted hereunder;

> *"14. S.R.O. No. 234/67, which is extracted above will show that the investigation and final report under Section 50 of the Abkari Act can be submitted by all the Officers of the Excise Department, not below the rank of Excise Inspectors within the areas for which they are appointed. 'Abkari Officer' is defined as per Section 3(2) of the Abkari Act which is extracted hereunder:*
> *"Abkari Officer: means the Commissioner of Excise or any officer or other person lawfully appointed or invested with powers under Sections 4 or 5"*
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> *S.R.O.No.234/67 was issued by the Government as per S.4 of the Kerala Abkari Act. As per the above notification, all officers of the Excise Department not below the rank of Excise Inspector are authorized to perform the acts and duties mentioned in Sections 40 to 53 within the area for which they are appointed. Similarly, the Commissioner of Excise, the Joint Commissioner of Excise, Deputy Commissioners of Excise and all Assistant Commissioners of Excise to be Abkari officers under their respective denominations for the purpose of Ss.31, 32, 34, 35, 38, 39, 53, 59, 67 and 67A of the Abkari Act and to discharge of the duties conferred and imposed on Abkari officers in the Sections aforesaid. The Commissioner of Excise and the Joint commissioner of Excise are having jurisdiction throughout the State. But, Deputy Commissioners of Excise and the Assistant Commissioners of Excise have*

> *jurisdiction only within the area for which they are appointed. Circle Inspectors of Excise, Excise Inspectors, attached to the circle and Excise Inspectors in charge of Ranges will be Abkari officers under their respective denominations for the purpose of Sections 31, 32, 34, 35, 38, 39, 53 and 59 of the Act and to exercise all the powers and to discharge all the duties conferred and imposed on Abkari officers in the Sections aforesaid within their respective jurisdiction. Similarly, clause 11, 12, and 13 of SRO No.234/67 give powers to different officers within their respective jurisdiction or within the area for which they are appointed.*
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> *15. Therefore, it is clear that all Excise Department officers not below the rank of Excise Inspector can file a final report under Section 50 only if the detection is within the area for which they are appointed. Clause (8) of S.R.O.No.234/67 is clear about that. Ofcourse, in the proviso to S.R.O.No.234/67, it is stated that, with reference to Sections 31 and 34 of the Act, there shall be no limit of jurisdiction within the Kerala State for the Abkari and other Department Officers named threin; but all persons arrested and all seizures made thereunder shall, without delay, be made over to the Excise Officer possessing local jurisdiction.*

10. A verification of oral evidence and documents in this case, it is clear that, PW4 conducted the investigation and submitted final report. The PW4 is not a person, who is having jurisdiction to investigate the matter and can

submit final report because admittedly, he is not an Excise Inspector of Mattannur Excise Range.

11. In the light of the above judgment, I think the prosecution case is unsustainable.

Therefore, this criminal appeal is allowed. The conviction and sentence imposed on the appellant/accused as per judgment dated 13.10.2005 in SC No. 344 of 2005 on the file of Additional Sessions Judge, Fast Track (Adhoc) No.II, Thalassery is set aside. The appellant/accused is set at liberty. The bail bond, if any, executed by the appellant/accused, is canceled.

(Sd/-)

P.V.KUNHIKRISHNAN,
JUDGE

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