IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 01ST DAY OF DECEMBER 2020 / 10TH AGRAHAYANA, 1942

CRL.A.No.2291 OF 2006

AGAINST THE ORDER/JUDGMENT IN SC 269/2006 DATED 25-10-2006 OF ADDITIONAL SESSIONS COURT (ADHOC-III),NORTH PARAVUR

AGAINST THE ORDER/JUDGMENT IN CP 15/2006 OF JUDICIAL MAGISTRATE OF FIRST CLASS - I, NORTH PARAVUR

APPELLANT/S/ACCUSED:

MOLY
AGED 48 YEARS
D/O.MATHAI, POYYATHURUTHY HOUSE,, KAPPELAKKUNNU BHAGAM, PUTHENVELIKKARA,, PUTHENVELIKKARA VILLAGE.

BY ADVS.
SRI.N.A.ALI
SRI.B.PREMOD
SMT.RENI.T.A

RESPONDENT/S/COMPLAINANT:

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

SMT. V. SREEJA, PP. ADV.SRI. LINDONS C. DAVIS, AMICUS CURIAE.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01.12.2020, 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 24.08.2003 at about 5.30 p.m., the appellant was found in possession of 6 packets of arrack, each packet having a capacity of 300 ml each and 2 packets of arrack, each packet having a capacity of 100 ml each in contravention of the provisions of the Abkari Act. The total quantity of the contraband possessed by the appellant was 2 litres of arrack.

3. Since there is no representation for the appellant, this court has appointed Adv. Lindons. C. Davis as Amicus Curiae to argue the case for the appellant.

4. Heard the learned Amicus Curiae and the learned Public Prosecutor.

5. The learned Amicus Curiae has argued that since no forwarding note was produced or marked in this case, the appellant is entitled to benefit of doubt.

6. It appears that no forwarding note was produced or marked in this case.

7. 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".

8. 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.

9. Since no forwarding note was produced and marked in this case, the prosecution could not establish the tamper-proof despatch of the samples to the laboratory. Therefore, there is no satisfactory link evidence to show that the same

samples which were 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 samples analysed in the laboratory. In the said circumstances, the appellant is entitled to benefit of doubt.

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

RK/01.12.2020