IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

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

CRL.A.No.2473 OF 2006

AGAINST THE JUDGMENT IN SC NO.645/2005 DATED 2-12-2006 ON THE FILE OF THE ADDITIONAL SESSIONS JUDGE, FAST TRACK COURT-1, PALAKKAD

APPELLANT/ACCUSED:

SEBASTIAN MATHEW@DEVASIYACHAN
S/O.MATHEW, KIZHAKAYIL VEEDU,, NEAR S.N.D.P. TEMPLE, CHITTUR, PALAKKAD.

BY ADV. SRI.VINOD KUMAR.C

RESPONDENT/COMPLAINANT:

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

OTHER PRESENT:

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

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

JUDGMENT

Dated this the 9th day of December 2020

…

The appellant is the accused in S.C.No.645 of 2005 on the file of the Additional Sessions Judge, Fast Track Court-1, Palakkad.

2. The above case is charge sheeted by the Agali Police Station against the appellant alleging offence punishable under Section 8 of the Abkari Act.

3. The prosecution case is that, on 22.7.2003 at 5.15 p.m., the accused was found in possession of 5 litres of arrack in a can.

4. To substantiate the case, the prosecution examined PW1 to PW5. Exhibits P1 to P6 are the documents marked on the prosecution. MO1 is the material object.

5. After going through the evidence and documents, the trial court found that, the accused committed the offence under section 8 of the Abkari

Act. The accused is sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1 lakh. In default of payment of fine, he is directed to undergo rigorous imprisonment for a period of three months.

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

7. Heard the learned counsel for the appellant and the learned public prosecutor.

8. The learned counsel for the appellant submitted that, the appellant is entitled the benefit of doubt for the simple reason that, the investigation in this case is conducted by PW5, The Assistant Sub Inspector of Police, who is not an authorized officer as per the Abkari Act. The counsel also submitted that, the property list is not marked in this case which is a fatal document to be marked by the prosecution.

9. The learned Public Prosecutor submitted that, there is oral and documentary evidence to prove the case against the appellant. The public prosecutor

submitted that, this Court may not interfere with the conviction and sentence imposed on the appellant on technical grounds.

10. Admittedly, the Assistant Sub Inspector of Police conducted the investigation in this case. The Assistant Sub Inspector of Police is not an authorized officer as per the Abkari Act to conduct investigation in abkari cases. In **Omana v. State of Kerala** (2015(5) KHC 1000), it is held that, if detection, arrest and seizure in an Abkari case are conducted by the Assistant Sub Inspector, the same will vitiate the trial. The same point was considered by this Court in Subash v. State of Kerala (2008(2) KHC 703), Biju and others v. State of Kerala (2011(1) KHC 518) and Chandrababu v. State of Kerala (2016(2) KLT 842). In the light of the above authoritative judgments, the accused is entitled the benefit of doubt on this reason also.

11. Moreover, the property list is not produced and marked in this case. Usually, the contraband article seized will be produced before the Magistrate

Court with a property list. The importance of the property list is that, only through the property list, the court can find out the date on which the property is reached before the court. There is no property list produced in this case. In such circumstances, the court is handicapped in finding out the date on which the property reached before the court. Simply because the police/excise witnesses deposed that, the property list reached in the court on such and such date, unless the documentary evidence like property list is there to verify, the oral evidence adduced by those witnesses can't be believed. In this case the property list is not marked. In such circumstances, on this ground also the accused is entitled the benefit of doubt.

12. In the light of the above discussions, 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 2-12-2006 in S.C.No.645 of 2005 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**