

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE-III, MAVELIKARA**Present:- Smt. P.P. Pooja, Additional Sessions Judge-III**Thursday, the 31th day of March, 2026**SESSIONS CASE No.625/2025***(Filed on 02.06.2025)*

Complainant : State of Kerala rep. by Excise Inspector,
Excise Range Office, Kayamkulam
in Crime No. 123/2024.
**(By Sri. K.Sajikumar, Additional Public
Prosecutor, Mavelikara)**

Accused : Soumya
(By Adv.Midhun. T. M)

Charge : Offence u/s.55(i) of Kerala Abkari Act.

Plea : Not Guilty

Finding : Not Guilty

Sentence/Order : The Accused is Acquitted of u/s 258(1) of
BNSS.

Description of the Accused

Sl. No	Name of accused	Father's/ Husband Name	Religion	Occupation	Address	Age
1.	Soumya	Suji Soman	-	-	Soorya Bhavanam,Pathiyoorkala Muri, Pathiyoor Village, Karthikappally Taluk.	37/2024

Date of :-

Occurrence : 06.11.2024

Complaint : 06.11.2024

Apprehension : 06.11.2024

Release on bail : 28.11.2024

Committal : 17.05.2025

Commencement of Trial	:	13.03.2026
Close of Trial	:	28.03.2026
Sentence/Order	:	31.03.2026

This Sessions Case having been finally heard on 30.03.2026 in the presence of both sides and the court on 31.03.2026 delivered the following:-

JUDGMENT

This is a case charge sheeted by Excise Inspector, Kayamkulam in Crime No. 123/2024 alleging commission of offence punishable u/s 55(i) of the Kerala Abkari Act.

2. Prosecution case is that on 06.11.2024 at 6.45 a.m, the accused was found in possession of 4.9 litres of Indian Made Foreign Liquor of the make Jawan XXX Rum in 5 bottles each having a capacity of one litre and engaged in the sale of the same at the sitout of the house bearing door No.IV/513 of Pathiyoor panchayath situated at Pathiyookala in Pathiyoor village in contravention of the provisions of the Kerala Abkari Act. Thus the accused is alleged to have committed the aforesaid offence.

3. On filing of the final report before the Judicial Magistrate of First Class-II, Harippad the case was taken into file as CP 4/2025. On filing of the final report before the Judicial Magistrate of First Class-II, Harippad the case was taken into file as CP 19/2024. After complying with Section 230 of BNSS, the learned Magistrate committed the case to the Court of Session, Alappuzha. Later the case was made over to this court for trial and disposal. The accused is on bail from the crime stage.

4. On appearance of the accused, after hearing both sides and satisfying that there are sufficient grounds to proceed against the accused charge was framed for the above offences, read over and

explained to the accused to which she pleaded not guilty and claimed to be tried .

5. Thereafter, the prosecution examined PW1 to 5 and marked Ext.P1 series and Ext.P2 to Ext.P15. CW2 was given up by the learned Additional Public Prosecutor. CW3 could not be traced out.

6. After closing the evidence for the prosecution the accused was examined u/s 351 (1) (b) of BNSS. She denied all the incriminating circumstances raised against her and maintained that she is innocent. Since there was no ground for an acquittal u/s 255 of BNSS, the accused was asked to enter her defence. No defence evidence was adduced.

7. Heard both sides.

8. The points that arise for determination are:-

- 1. Whether the accused was found in possession of 4.9 litres of Indian Made Foreign Liquor and engaged in the sale of the same on 06.11.2024 at 6.45 a.m at her house situated in Pathiyoor grama panchayath at Pathiyookala in Pathiyoor village and thereby committed the offence punishable u/s 55(i) of the Kerala Abkari Act as alleged?**
- 2. Whether the accused is guilty or not?**
- 3. Sentence or order?**

9. Point Nos.1 & 2:- PW1 was the Excise Inspector, Haripad who detected the crime. According to him, on 06.11.2024 he got reliable information that the accused was conducting sale of Indian Made Foreign Liquor at her house situated at Pathiyookala. After informing the matter to the court he along with the excise party reached her house and they saw the accused pouring liquor from a bottle to a glass and handed over the same to the person stood near to her and the person who received the glass gave currency notes to the accused. The bottle held by the accused contained 900 ml of liquor and the bottle was affixed

with label Jawan XXX Rum. The glass held by the person who stood near to the accused having the smell of alcohol. On tasting and smelling the liquor contained in the bottle the excise party convinced that the bottle contained Indian Made Foreign Liquor. On inspecting the nearby places a plastic bottle containing four bottles each having a capacity of one litre and affixed with label Jawan XXX Rum recovered from the sitout of her house. The four bottles were also opened and on smelling and tasting the liquor contained in each bottle, the excise party convinced that the bottles contained Indian Made Foreign Liquor. 200 ml of liquor from the bottle held by the accused was taken as sample. The sample along with the residue and the other bottles were taken into custody by sealing and labelling the same. He arrested the accused at the spot by preparing Ext.P1 series arrest memo, arrest notice and inspection memo. He prepared Ext.P2 mahazar at the spot. He registered Ext.P3 crime and occurrence report. He produced his personal seal impression before the court which is marked as Ext.P4. He produced the material objects before the court as per Ext.P5 property list and he proved Ext.P6 as the forwarding note prepared by him for sending samples to the chemical examination lab. He produced the material objects except the sample before the Deputy Excise Commissioner, Alappuzha and proved Ext.P7 as the report to that effect. He identified the accused in the dock.

10. The prosecution examined PW2 to prove the preparation and attestation of mahazar at the spot and arrest of the accused. He denied his signature in Ext.P1 arrest memo and Ext.P2 mahazar and turned hostile to the prosecution by deposing that he has not witnessed the incident.

11. PW3 was the Village Officer, Pathiyoor who prepared Ext.P8 location sketch.

12. PW4 was the Secretary of Grama panchayath, Pathiyoor who issued the ownership certificate of the house in question. He proved Ext.P9 as the ownership certificate of the house bearing door No. IV/513 and the owners of the house in question was Usha and Surya who is the accused in the case.

13. PW5 was the Excise Inspector, Kayamkulam who conducted investigation in the case. He recorded statements of the witnesses and obtained Ext.P8 and Ext.P9 from the village officer and Panchayath Secretary. He produced Ext.P11 death certificate of Smt.Usha, the mother of the accused and proved Ext.P15 as the chemical examination report available in the case. On completion of investigation he filed final report before the court.

14. The evidence available to prove the alleged occurrence is the oral testimony of PW1 who detected the crime. Eventhough he testified that he seized the material objects from the actual and immediate possession of the accused, there is no other evidence to substantiate the same as PW2 turned hostile to the prosecution.

15. From Ext.P15 Chemical Examination Report it can be seen that the samples were received in the lab on 26.11.2024 and the officer received the sample from the court on 23.11.2024. There is no explanation offered by the prosecution that who was in custody of the sample during the interregnum which is also fatal to the prosecution. The name of the officer who received the sample from the court and allegedly produced the same before the chemical examination lab is not stated in Ext.P6 forwarding note is doubtful.

16. True that the prosecution could establish that the sample sent for analysis contained 41.54% by volume of Ethyl Alcohol as stated in Ext.P15. But there is no evidence to show that the sample drawn from the material object seized from the accused and produced

before the court reached the Chemical Examination Lab in a tamper proof manner. There is no substantive evidence to prove that material fact. In the absence of such evidence and the proof of the fact that the alleged official act was performed no support of presumption provided in Section 117 (e) of BSA can be given to the same. So, there is a missing link between Ext.P15 Chemical Examination report and the accused. The prosecution has to prove all the links starting from the drawing of the sample till the same reached the hands of the Chemical Examiner. The prosecution should have examined the clerk concerned who received the sample in the court and forwarded the same to the lab to prove the above fact. The same is also fatal to the prosecution case. There is nothing to connect the accused with the contraband allegedly seized from her and Ext.P15. So, the accused is entitled to the benefit of doubt.

17. In order to bring home the indictment u/s 55(i) of the Kerala Abkari Act it must be established that the accused was engaged in the sale of liquor or that he stored the same for the purpose of sale. The prosecution failed to cite and examine the person who allegedly present at the spot for taking liquor. Apart from the interested testimony of PW1, there is no evidence to prove the ingredients of sale as alleged by the prosecution.

18. From the above discussion, the court is of the considered view that the prosecution failed to prove the charge levelled against the accused beyond reasonable doubt. As there is an element of doubt in the prosecution case the accused is entitled to its benefit. Accordingly, the points are found against the prosecution.

19. Point No.3:- In view of the findings on point Nos. 1 & 2 the accused is found not guilty for the offence punishable u/s 55(i) of the Kerala Abkari Act and she is acquitted of the said offence u/s 258(1) of

BNSS. The accused is set at liberty. The bail bond executed by her stands cancelled.

(Dictated to the C.A, transcribed and typewritten by her, corrected and pronounced by me in open court on this the 31st day of March, 2026.)

**POOJA P.P
ADDITIONAL SESSIONS JUDGE-III
MAVELIKARA.**

APPENDIX:

Witness Examined for Prosecution:-

PW1	:	13.03.2026	Kunjumon
PW2	:	13.03.2026	Aneesh
PW3	:	16.03.2026	Saheer
PW4	:	17.03.2026	Sindu.S
PW5	:	25.03.2026	Muhammed Musthafa. E.

Witness Examined for defence:- Nil

Exhibit marked for Prosecution:-

P1	06.11.2024	Arrest Memo
P1(a)	06.11.2024	Arrest Notice
P1(b)	06.11.2024	Custody Memo
P1(c)	06.11.2024	Inspection Memo
P2	06.11.2024	mahazar
P3	06.11.2024	Crime and Occurrence Report
P4	06.11.2024	Specimen Seal
P5	06.11.2024	Property List
P6		Forwarding Note
P7	06.11.2024	Letter
P8		Scene Plan

P9	07.11.2024	Ownership Certificate
P10		Inventory of items to be Disposed
P11	10.12.2024	Death Certificate
P12	11.03.2026	Report
P13		Photograph
P14	06.03.2025	Certificate
P15		Chemical Analysis Certificate

Exhibits Marked for Defence:- Nil

Material Objects:- Nil

ADDITIONAL SESSIONS JUDGE-III

