

### **TABULAR FORM**

Serial Number : Sessions Case No.327/2023  
and Crime No. of the offence : Excise Range Office, Bandadka  
Crime No.50/2020

### **DESCRIPTION OF ACCUSED**

Name : Kunhiraman.K  
Father's Name : S/o Karyan (L)  
Age : 40/2022  
Occupation : --  
Address : Chanthala Colony Road, Chanthala  
Desom, Bedadukka Village, Kasaragod  
Taluk.

### **DATE OF**

Occurrence : 01.08.2020  
Complaint : 15.12.2022  
Apprehension : 02.02.2023 (Surrendered)  
Released on bail : 02.02.2023  
Commitment : 03.04.2023  
Commencement of trial : 31.01.2025  
Close of trial : 29.05.2026  
Sentence or Order : 01.06.2026  
Service of copy of Judgment  
or findings of accused : --  
Explanation for delay : --

Assistant Sessions Court, Kasaragod  
Dated: 01.06.2026.

Sd/-  
**ASSISTANT SESSIONS JUDGE**  
**KASARAGOD**

**IN THE COURT OF SESSION, KASARAGOD DIVISION**

Present :- Smt.Priya.K.P, Assistant Sessions Judge.  
Monday, the 1<sup>st</sup> day of June, 2026/11<sup>th</sup> Jyaishta 1948.

**SESSIONS CASE No.327/2023**

(This case is committed by the Judicial First Class Magistrate-I, Kasaragod, as per C.P. No. 354/2022 dated: 03.04.2023).

|                      |                                                                                                                             |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------|
| Complainant          | Excise Inspector, Bandadka Excise Range.<br>Crime No.50/2020<br>Represented by; Additional Public Prosecutor.               |
| Accused              | Kunhiraman.K, aged 40/22, S/o Karyan (L),<br>Chanthala Colony Road, Chanthala Desom,<br>Bedadukka Village, Kasaragod Taluk. |
| Defended by          | Adv.K.Kumaran Nair and Roopa Anand , Advocates<br>for the Accused                                                           |
| Offence              | U/s.55 (g) of Kerala Abkari Act I of 1077.                                                                                  |
| Plea of the Accused  | Not Guilty                                                                                                                  |
| Finding of the Judge | Not Guilty.                                                                                                                 |
| Sentence or order    | Acquitted U/s. 235 (1) of Cr.P.C.                                                                                           |

This case having been heard on this day and the Court delivered the following:-

**JUDGMENT**

The accused is put on trial for the offences punishable U/s. 55(g) of the Abkari Act I of 1077 (hereinafter referred to as 'the Act').

2. The prosecution case in brief is as follows:- At about 1 p.m. on 01.08.2020, near the house bearing No.V/12 of Bedadka Grama Panchayat, Chanathala, accused without lawful authority was found in possession of

50 litres of wash in a blue plastic barrel having capacity of 50 litres, 30 litres of wash in a blue plastic can having capacity of 35 litres and 20 litres of wash in a white plastic can having capacity of 25 litres (total 100 litres) in contravention of provisions of the Act. Thus the accused committed the offence punishable U/s. 55(g) of the Act.

3. During the detection of offence, the accused was not arrested. Subsequently, the accused was surrendered before the committal court on 02.02.2023 and he was enlarged on bail on that day itself.

4. The final report was filed in the above crime U/s. 173(2) of Cr.P.C before the Judicial First Class Magistrate-I, Kasaragod and the learned Magistrate took the case on file as CP. 354/2022.

5. On appearance of the accused, he was enlarged on bail. After furnishing the copies of the prosecution records, the learned Magistrate committed the case U/s. 209 of Cr.P.C. to the Court of Sessions, Kasaragod Division as per the order dated 03.04.2023. Thereafter, the Hon'ble Sessions Judge took the case on file as SC.327/2023 and made over the case to this Court for disposal.

6. On receipt of summons, the accused appeared before this court.

After hearing both the sides, the charge was framed against the accused U/s. 55(g) of the Act. When the charge was read over and explained to the accused, he pleaded not guilty and claimed to be tried.

7. In order to prove the case, the prosecution examined PW1 to PW4 and marked Ext.P1 to Ext.P9 documents. Material Objects were marked as MO1 to MO3. After the closure of the prosecution evidence, the accused was questioned U/s.313 (1) (b) of Cr.P.C. He denied all the incriminating circumstances appearing in evidence against and pleaded his innocence.

8. Thereafter, the prosecution and the defence were heard U/s.232 of Cr.P.C. Since, there is nothing to invoke the power U/s. 232 of Cr.P.C., the accused was directed to enter upon his defence. No defence evidence was adduced.

9. Heard both sides.

10. The points that arise for consideration are:

- i. Whether the accused without lawful authority was found in possession of 100 litres of wash in contravention of Section 55(g) of the Act at about 1 p.m. on 01.08.2020, near the house bearing No.V/12 of Bedadka Grama Panchayat, Chanathala?
- ii. What is the sentence or other orders to be passed?

11. Point Nos. (i) :- The prosecution case is that at about 1 p.m. on

01.08.2020, near the house bearing No.V/12 of Bedadka Grama Panchayat, Chanathala, accused without lawful authority was found in possession of 50 litres of wash in a blue plastic barrel having capacity of 50 litres, 30 litres of wash in a blue plastic can having capacity of 35 litres and 20 litres of wash in a white plastic can having capacity of 25 litres (total 100 litres) in contravention of provisions of the Act.

12. PW1 is the eye witness to the incident and witness to Ext.P8 seizure mahazar. PW2 is the Village Officer, Bedadka village issued Ext.P1 site plan Ext.P2 possession certificate. PW3 is the investigating officer. PW4 is the Preventive Officer, Bandadka Excise Range and detected the offence.

13. PW4, the Preventive Officer, Excise Range Office, Bandadka deposed that on 01.08.2020 while he was doing patrolling duty with excise party at Chanathala, he got information about the manufacture of arrack by accused. On search of the premises of house bearing No.V/12 of Bedadka Grama Panchayat, he found accused who was stirring something. Seeing the excise party, accused escaped from the spot. On search of the house, 50 litres of wash in a blue plastic barrel having capacity of 50 litres, 30 litres of wash in a blue plastic can having capacity of 35 litres and 20 litres of wash in a white plastic can having capacity of 25 litres were found. It

was confirmed to be wash and took custody of the plastic barrel and plastic can with wash. Thereafter he had drawn sample of 500 ml wash each in 650 ml bottles, sealed with his personal seal and labelled. The remaining wash was disposed in the place of occurrence and blue plastic barrel and blue and white plastic cans were taken into custody. He prepared Ext.P8 seizure mahazar. He further deposed that he could not identify the accused. The blue plastic barrel was marked as MO1, blue plastic can was marked as MO2 and white plastic can was marked as MO3. The above said items were produced to Excise Range Office, Bandadka.

14. PW1 deposed that he had not seen the incident. He attested in Ext.P8 seizure mahazar.

15. PW2 deposed that he issued Ext.P1 site plan and Ext.P2 possession certificate.

16. The Excise Inspector, who had additional charge of Excise Range Office, Bandadka registered Ext.P5 crime and occurrence report. The samples were produced before the court with property list (Ext.P6) and forwarding note (Ext.P7).

17. PW3 conducted investigation of the case. He deposed that he prepared Ext.P3 scene mahazar, collected site plan, possession certificate, recorded the statement of witnesses and submitted report before the court

after completing the investigation. The chemical analysis report is marked as Ext.P4.

18. The evidence of PW4 revealed that on 01.08.2020 while he was doing patrolling duty with excise party at Chanathala, he got information about the manufacture of arrack by accused. On search of the premises of house bearing No.V/12 of Bedadka Grama Panchayat, he found accused who was stirring something. Seeing the excise party, accused escaped from the spot. On search of the house, 100 litres of wash was found and confirmed it. He took custody of the plastic barrel and plastic can and had drawn samples which was sealed and labelled. The samples, plastic barrel, plastic can and case records were produced to Excise Range Office, Bandadka. The wash was disposed in the spot. The Excise Inspector registered Ext.P5 crime and occurrence report. The samples were produced before the court on 03.08.2020 with Ext.P6 property list and Ext.P7 forwarding note. The property list does not contain the specimen seal impression of PW4. The delay in producing the samples before the court and its safe custody till that time remains unexplained. The samples were despatched from the court on 22.09.2020 through Civil Excise Officer, Janardhanan.K.A. and was reached to the Regional Chemical Examiner's Laboratory, Kozhikode on 23.09.2020. The said officer was not examined

for proving the tamper proof despatch of the samples to the laboratory.

19. In **Girish Vs. State of Kerala 2023 (7) KHC 435** it is held that the absence of impression of specimen seal in the mahazar, property list and non disclosure of the name of police officer in the forwarding note and delay in producing the sample before the Chemical Examiner's Laboratory are the circumstances, to doubt the identity of the sample drawn and sample sent for chemical analysis.

20. In **Babu Raj Vs. State of Kerala 2021 (6) KHC 92** the Hon'ble of High Court of Kerala held that a legal obligation is cast on the prosecution to prove that it was the contraband substance allegedly seized from the possession of accused eventually reached to the Chemical Examiner's Laboratory in a tamper proof condition. The chain of custody of the contraband commencing from the place of occurrence to the stage when the contraband reaches the Laboratory is required to be established by the prosecution.

21. In **Sasidharan Vs. State of Kerala 2017 KHC 3404**, the Hon'ble High Court of Kerala held that where the sample changed several hands before reaching the Chemical Examiner's Laboratory the prosecution had to examine various officials who handled the sample to prove that while in their custody the seals on the sample have not been tampered with.

22. In **Prabhu Prakash vs. State of Kerala [2025 KHC online 1063]**, the Hon'ble High Court held that prosecution has obligation to prove that contraband substance allegedly seized from the accused eventually reached to chemical examiner's laboratory in a tamper proof condition and must prove the chain of custody from place of occurrence up to production before the chemical examiner's laboratory. It is also held that mandate of Section 53A Abkari Act must be complied with in letter and spirit, violation of which vitiates entire prosecution case.

23. It is seen from the evidence that the property list (Ext.P6) does not contain the specimen seal impression affixed in the sample bottles. The delay in producing the samples before the court and its safe custody till that time remains unexplained. The officer who forwarded the samples to the laboratory was not examined for proving the tamper proof despatch of the samples. Prosecution failed to prove the chain of custody of the samples from its drawing till it is reached to the laboratory. These facts are fatal to the prosecution case. This point is found against the prosecution.

24. Point No. (ii):- In the light of the finding on point No. (i), the accused is found not guilty of the offence punishable U/s. 55(g) of the Act and he is acquitted U/s. 235(1) of Cr.P.C. His bail bond stands cancelled and he is set at liberty.

25. MO1 blue colour barrel, MO2 Blue colour can and MO3 white colour plastic can shall be confiscated. The confiscation shall take place only after the expiry of the period of appeal or if an appeal has been filed, only after the disposal of the appeal.

Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court, this the 1<sup>st</sup> day of June, 2026.

Sd/-

ASSISTANT SESSIONS JUDGE

APPENDIX OF EVIDENCE

**FORM 62**

List of Prosecution/Defence/Court Witnesses  
(Rule 134 Criminal Rules of Practice, Kerala)

A. Prosecution Witness

| Rank    | Name              | Whether Eye Witness, Police Witness<br>Expert Witness, Medical Witness,<br>Other Witness |
|---------|-------------------|------------------------------------------------------------------------------------------|
| PW1/CW3 | Sasi              | Eye Witness                                                                              |
| PW2/CW6 | Prakasan M        | Official Witness                                                                         |
| PW3/CW7 | Prasannakumar V.V | Official Witness                                                                         |
| PW4/CW1 | Byju T.S          | Official Witness                                                                         |

B. Defence Witness : Nil

C. Court Witness : Nil

**List of Prosecution/Defence/Court Exhibits**

**A. Prosecution Exhibits**

| Sl.No | Exhibit Number | Date       | Description                 |
|-------|----------------|------------|-----------------------------|
| 1     | P1/PW2         | 03.01.2021 | Eye Sketch                  |
| 2     | P2/PW2         | 10.08.2022 | Possession Certificate      |
| 3     | P3/PW3         | 13.07.2022 | Scene Mahazar               |
| 4     | P4/PW3         | 26.04.2022 | Chemical Report             |
| 5     | P5/PW3         | 01.08.2020 | Crime and Occurrence Report |
| 6     | P6/PW3         | 01.08.2020 | Property List               |
| 7     | P7/PW3         | 01.08.2020 | Forwarding Note             |
| 8     | P8/PW4         | 01.08.2020 | Seizure Mahazar             |
| 9     | P9/PW4         | 01.08.2020 | Specimen Seal Impression    |

B. Defence Exhibits : Nil

**MOS MARKED** :

MO1 : Blue Color Barrel

MO2 : Blue Color Plastic Can

MO3 : White Color Plastic Can

MOS UNMARKED : Nil

Sd/-

ASSISTANT SESSIONS JUDGE

// True Copy//

ASSISTANT SESSIONS JUDGE

**Fair/Copy of Judgment in S.C.327/2023**

**Dated: 01.06.2026**

**IN THE COURT OF SESSION,  
KASARAGOD DIVISION**

**Sessions Case No. 327/2023**

**Date of Judgment: 01.06.2026**

To

1. The Additional Public Prosecutor,  
Kasaragod.
2. DCMS