**IN THE COURT OF THE ADDITIONAL ASSISTANT SESSIONS JUDGE KOLLAM**

Present : Sri.Sameer A., Additional Asst. Sessions Judge
Monday , the 11th day of January, 2021
21st day of Pousha 1942 M.E.

Sessions Case No. 206/18

(C.P.No. 16/16 of J.F.M.C- II Kollam Crime No. 143/15 of Kollam Excise Range Office)

Complainant : State represented by the Excise Inspector, Kollam Excise Range Office

( Represented by Addl. Public Prosecutor)

Accused : Babu @ Chathan Babu, aged 62 years, S/o. Sreedharan, Panambilazhkathu veedu, Kureepuzha Desom , Kollam

( By Adv.Sri.P.Suresh Babu )

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

Plea of the accused : Not Guilty
Finding of the Court : Not Guilty

Sentence or Order : Accused is acquitted u/s. 235 (i) Cr.P.C.

Dates of trial and hearing: 30.01.20, 15.02.20, 13.03.20, 26.06.20, 26.08.20, 04.11.20, 10.12.20, 11.12.20, 17.12.20, 22.12.20, 04.01.21, 07.01.21,

This case has been finally heard on 07.01.21 and the court on 11.01.21 delivered the following.

JUDGMENT

The accused stands charged with having committed the offence punishable u/s. 55 (i) of Abkari Act by the Excise Inspector, Excise Range Office Kollam.

2. The prosecution case in brief is as follows:-

On 04.06.15 at 6.20 a.m in front of the Family Welfare Sub Centre of

Kureepuzha Desom Sakthikulangara, Kollam Taluk the accused was found engage in illicit sale of Indian Made Foreign Liquor by the Excise Inspector Kollam range and party. 640 ml Indian Made Foreign Liquor , a crystal glass and Rs.240/- were recovered from the possession of the accused then and there. Thus, according to the prosecution the accused have committed the above mentioned offence.

3. On completion of investigation, CW1, the Excise Inspector Kollam Excise Range Office has filed final report against the accused alleging commission of offence punishable u/s.55 (i) of Abkari Act, before the Judicial First Class Magistrate Court II, Kollam and the case was taken on file as CP No.16/16. Thereafter the case against the accused was committed to the Hon'ble Sessions Court, Kollam u/s.209 (a) of Cr.P.C and was taken on file as SC. 206/18 and made over to this court for trial and disposal.

4. The accused is on bail. The learned Public Prosecutor has opened his case by describing the charge to be brought against the accused and evidence, he proposes to adduce to prove the guilt of the accused. On consideration of the records of the case ,documents submitted there with and on hearing both sides this court was of opinion that there are sufficient grounds to presume that the accused has committed the offences exclusively triable by a Court of Sessions. Hence a charge for the offence punishable u/s.55 (i) of Abkari Act was framed, read over, translated and explained to the accused. He denied having committed the offence.

5. To prove its case, the prosecution examined Pws 1 and 2 and got marked Exts.P1 to P8. CW3 is reported as no more. Hence he was not examined as prosecution witness. CW2 is given up by the prosecution. On

closure of the prosecution evidence, the accused was questioned u/s. 313 (1) (b) Cr.PC. He denied all the incriminating circumstances found in evidence against him. The prosecution and accused were heard u/s.232 Cr.P.C. No defence evidence was adduced. Heard both sides .

6. The points arise for consideration are :-

1. Whether the accused was found in illicit possession of 640 ml Indian Made Foreign Liquor ?

2. Whether the the accused was found engage in illicit sale of Indian Made Foreign Liquor ?

3. Did the accused commit offence punishable u/s. 55 (i ) of Abkari Act ?

4. Sentence or order ?

7. Point No. 1 to 3:-

For the sake of convenience, as well as for avoiding the repetition of facts and evidence all these points are considered together. For proving the prosecution case PW1 and PW2 are examined and Exts.P1 to P8 are marked. PW1 is an independent occurrence witness though admitted his signature in Ext.P1 mahazar totally deposed hostile to the prosecution that he has no acquaintance with the facts of this case. Hence he was declared hostile at the instance of the prosecution. Hence the case depends upon sole evidence of the prosecution witness, PW2, who is none other than the detecting officer , conducted the investigation and submitted charge sheet before the court. PW1 has prepared Ext.P1 mahazar, registered Ext.P2 occurrence report, prepared Ext.P3 arrest memo, Ext.P4 arrest intimation, prepared Ext.P5 property list, prepared Ext.P6 report, Ext.P7 forwarding note and produced Ext.P8 chemical analysis report.

8. PW2 deposed that on 04.06.15 on patrolling duty he along with the excise party when reached at Mamoottilkadavu an information has been received with regard to the illicit sale of liquor at near to the Family Welfare Sub Centre Vallikeezhu and proceeded to the said place. When the party reached near to the Family Welfare Sub Centre found that a person pouring liquor from a glass, handing it over to another person and on receipt of the same the person who received the glass returned currency notes to the person who poured the liquor to glass. On seeing the excise party the person who allegedly bought liquor after abandoning the glass and liquor flood away from the spot. Though the excise party chased the person who allegedly bought liquor from the accused, they could not apprehend him. On inspection found 650 ml of Indian Made Foreign Liquor in a bottle having capacity of one litre, Rs.240/- found from the pocket of the accused. A mahazar was prepared then and there. The accused was arrested on the spot. Samples were collected from the liquor. PW2 has registered Ext.P2 crime and occurrence report. The accused was arrested as per Ext.P3 and P4 arrest records. The sample and currency notes were produced before the court as per Ext.P5 property list. The glass and remaining liquor produced before the Deputy Commissioner as per Sec.53 (a) of Abkari Act as per Ext.P6 report . Ext.P7 forwarding note has been prepared for chemical examination. Ext.P8 chemical analysis report received after examination stating that the liquid seized from the possession of the accused was Indian Made Foreign Liquor. PW2 has completed the investigation and submitted charge sheet before the court.

9. But the defence side put up a specific case that the accused has purchased liquor from Kavanadu Beverages Corporation Outlet for his own use

as per proper bill. He has used it on two occasions and the remaining liquor seized by the excise party from his house and foisted this case against him. He has not conducted the sale and nothing has been recovered from his possession as alleged by the prosecution.

10. Though the prosecution alleges illicit sale of liquor against the accused , no independent witnesses were arrayed and produced by the prosecution to prove the illicit sale. PW2 has not narrated the identification features of the person who allegedly bought liquor from the accused. PW2 was unable to express the identification features of the said purchaser even before the court. Ext.P1 mahazar is silent with regard to the identification features or details of the person who allegedly bought liquor from the accused. So there is no evidence before this court to show that the accused was engaged in illicit sale of liquor at the time of detection of offence in this case.

11. As per the evidence of PW2 he has produced the currency notes and sample collected from the liquor before the court as per Ext.P5 property list. On the same day he has produced the glass and remaining liquor before the Excise Deputy Commissioner as per Ext.P6 report. But the prosecution has not produced the inventory before the court to show that the material objects stated as item No.1 and 3 in Ext.P6 list has been produced before the Deputy Excise Commissioner. Even those materials are not produced before the court to prove that the contraband articles were seized from the possession of the accused at the time of detection of offence in this case. The non-production of item No.1 and 3 in Ext.P6 before this court and non-production inventory report before the court absolutely defeats the version of prosecution that Indian Made Foreign Liquor allegedly meant for sale were recovered from the possession of the

accused on 04.06.15 at 6.20 am in front of the Family Welfare Sub Centre as alleged by the prosecution.

12. PW2 has admitted before the court that he was the detecting officer of this case. He has conducted the entire investigation and filed charge sheet against the accused in this case. In Krishnan @ Appu V. State of Kerala reported in 2019 (1) KLT S.N 13 the Hon'ble High Court of Kerala held that the " detecting officer and investigating officer cannot be the same person. If so, the fair investigation and fair trial will be vitiated as against the accused and on this ground, the accused is entitled to get acquittal". Here PW2 has detected the offence, conducted the investigation and submitted charge sheet before the court against the accused. So as per the dictum laid down by the Hon' ble High Court as Supra the accused was denied of the fundamental rights as envisaged under article 21 of the constitution of India as held by the Hon'ble Supreme Court in Mohanlal's case.

13. As discussed above, the prosecution has failed to prove that liquor was seized from the possession of the accused due to the absence of recovery of material objects from the possession of the accused. It is the specific case of the prosecution that without any authority the accused was found in possession of 640 ml Indian Made Foreign Liquor allegedly meant for sale. In order to charge a person u/s. 55 (a) and (i) of Abkari Act, the prosecution must establish that he was engaged in importing or exporting, transporting, transiting, possessing or selling or storing liquor or intoxicating drug in contravention to the provisions of the Act or any Rule or any order made under the Act. By notification SRO No.725/2003 the maximum quantity of Indian Made Foreign Liquor which a person is authorised to possess or transport

without the authority of permit or licence is three litres. In the present case as per the prosecution case the accused was in possession of only 640 ml of Indian Made Foreign Liquor. It is well within the permissible quantity as per the Government order issued u/s. 13 of the Abkari Act. Hence the accused cannot be found fault with as per the provisions of the Act for possessing 640 ml of Indian Made Foreign Liquor without any authority. Hence the prosecution has miserably failed to prove the case against the accused beyond reasonable doubt. So the accused is found not guilty of the offence punishable u/s.55 (i) of Abkari Act. Points 1 to 3 are answered against the prosecution.

14. Point No.4:- In the result, the accused is found not guilty of the offence punishable u/s. 55 (i) of the Kerala Abkari Act and he is acquitted u/s. 235 (i) Cr.PC. Bail bond of the accused stands cancelled and he is set at liberty.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court on this the 11 th day of January, 2021.

Sd/-
Sameer.A,
Additional Assistant Sessions Judge.

APPENDIX:
WITNESSES EXAMINED FOR THE PROSECUTION

PW1 : Muraleedharan Pillai

PW2 : O.Prasad

EXHIBITS MARKED FOR PROSECUTION:

P1: Mahazar proved by PW1 on 11.12.20

P2 : Crime and occurrence report proved by PW2 on 17.12.20

P3 : Arrest memo proved by PW2 on 17.12.20

P4: Arrest intimation proved by PW2 on 17.12.20

P5: Property list proved by PW2 on 17.12.20

P6 : 53A report proved by PW2 on 17.12.20

P7: Forwarding note proved by PW2 on 17.12.20

P8: Chemical analysis report proved by PW2 on 17.12.20

WITNESS FOR DEFENCE : Nil

EXHIBITS FOR DEFENCE: Nil

MATERIAL OBJECTS : Nil

Sd/-
Sameer.A,
Additional Assistant Sessions Judge.

**Tabular form to be annexed to judgment as per Rule 132 of criminal Rules of Practice.**

1. Serial No. : Sessions Case No. 206/18

2. Name of Police Station & Crime No. of offence : Kollam Excise Range Office Crime No.143/15

**DESCRIPTION OF THE ACCUSED**

3. Name of accused : Babu @ Chathan Babu

4. Father's name : Sreedharan
5. Occupation : ----
6. Residence : Panambilazhkathu veedu, Kureepuzha Desom , Kollam

7. Age : 62
8. Caste : ---

**DATES OF**

9. Occurrence : 04.06.15
10. Complaint : 04.06.15
11. Apprehension : 04.06.15
12. Release on bail : 02.07.15
13. Commitment : 16.01.18
14. Commencement of trial : 30.01.20
15. Close of trial : 07.01.21

16. Sentence or Order : 11.01.21

17. Service of copy judgment or finding on accused : No delay

18. Reason for delay : No delay.

Sd/-
Sameer.A
Additional Assistant Sessions Judge

//True Copy//

Sameer.A
Additional Assistant Sessions Judge