

IN THE COURT OF SESSIONS, KOLLAM DIVISION

Present:- Smt. Reena Das T.R., Additional Sessions Judge,
Additional Sessions Court (Abkari Cases), Kottarakkara.
Friday, the 17th day of April, 2026 / 27th Chaithram 1948.

SESSIONS CASE No.662 /2022

(C.P. No.14/2022 on the file of the Judicial Magistrate of First Class,
Karunagappally in Crime No.26 /2021 of Karunagappally Excise Range)

Complainant : State of Kerala represented by the Excise
Inspector, Karunagappally Excise Range Office.

(By Adv. Sri. D.S. Sonu,
Special Public Prosecutor)

Accused : Babu, aged 60/2021, S/o. Nanu,
Oruvukkara Varumbukalil Veedu, Kollara Muri,
Vadakkumthala Village, Karunagappally.

(By Adv. Sri. C.Sajeendra Kumar)

Charge : Offence punishable U/s.55(i)
of Abkari Act.

Plea of the accused : Not Guilty

Finding of the Court : Not Guilty

Sentence or Order : Accused is acquitted U/s.235(1) Cr.P.C.

Date on which trial
Commenced : 10.02.2026

Date on which trial
closed : 13.03.2026

No. of days the case
stood posted for trial : 3 days

This case having been finally heard on 16.04.2026 and the Court on
17.04.2026 delivered the following:-

JUDGMENT

This is a case charge sheeted by the Excise Inspector, Karunagappally in Crime No.26/2021 of Karunagappally Excise Range Office against the accused alleging offence punishable U/S.55(i) of Kerala Abkari Act.

2. The prosecution case, in brief, is that on 1/2/2021, at 6:45 AM, a team of excise officials, led by the Excise Circle Inspector, found the accused in illicit possession of 2.5 litres of Indian Made Foreign Liquor near the offering box of Thengil Devi Temple, Kollaka Muri, Vadakkumthala Village, Karunagappally Taluk. It is alleged that the accused had kept the liquor for the purpose of sale. By the said act, the accused is alleged to have committed an offence punishable under Section 55(i) of the Kerala Abkari Act.

3. Upon filing final report, JFCM -Karunagappally took cognizance for the above said offence as CP No.14/2022 and issued process against the accused. The accused appeared before the said court on process. After complying with all the formalities U/S.207 Cr.P.C, Ld Magistrate committed the case to the Court of Sessions Kollam. Subsequently the case was made over to this Court for trial and disposal. After hearing the prosecution and the accused charge for offences punishable U/S. 55(i) of Kerala Abkari Act was framed, read over and explained to the accused to which he pleaded not guilty.

4. After closure of the prosecution evidence, the accused was examined U/S.313 Cr.P.C. He denied all the incriminating circumstances brought against

him. Thereafter the matter was heard U/S.232 Cr.P.C. As it was found to be not a fit case to pass an order of acquittal U/S.232 Cr.P.C, the accused was called upon to adduce defence evidence. But, the accused did not adduce any defence evidence.

5. Heard both sides.

6. Following are the points arising for consideration:-

1) *Did the accused, on 1/2/2021, at 6:45 AM., was found in his possession 2.5 litres of Indian Made Foreign Liquor, kept for the purpose of sale, near the offering box of Thengil Devi Temple, Kollaka Muri, Vadakkumthala Village, Karunagappally Taluk, and thereby commit an offence punishable under Section 55(i) of the Kerala Abkari Act?*

2) *Whether the prosecution succeeded in establishing the guilt of the accused beyond the shadow of any reasonable doubt, if so*

3) *What should be the sentence or order?*

7. Point Nos 1 and 2:-

To prove the case, prosecution has examined PW1 to PW3 and marked Exts.P1 to P6 documents and no material objects were marked.

8. PW1 was the attestor of seizure mahazar. He denied his signature on the document. He stated that he knows the accused as a neighbour. He did not support the prosecution.

9. PW2 was the Preventive Officer at the Karunagappally Excise Range Office. He deposed that on 1/02/2021, at 6:45 AM, while on patrol duty, he

observed accused and one person near an electric post, approximately 170 meters south of the Kollakom room of Thengil Devi Temple, Vadakkumthara Village. Of them, the accused was seen taking a bottle from a bag and handing it to the other, who placed it in his pocket. Upon seeing the excise officials, both individuals fled. The officials could not apprehend them immediately. Examination of the abandoned bottles revealed them to contain Indian Made Foreign Liquor. Samples were collected from two bottles, sealed, and taken for further examination. The seizure mahazar was prepared and shown to the witness, marked as Ext.P1. PW1 later appeared at the range office and provided a statement before the investigating officer.

10. During cross-examination, PW2 stated that the accused could not be arrested at the time as he had fled. Only one bottle was sampled, but he denied that the accused had no connection with the case.

11. PW3 was the Excise Range Inspector, Karunagappally. He prepared the occurrence report in the case relating to the recovery made by the first witness, marked as Ext.P2. He also prepared and showed the property list and the forwarding note, marked as Ext.P3 and Ext.P4, respectively. After sampling, the seized items were produced before the Deputy Excise Commissioner, Kollam, for proceedings under Section 53A. As part of the investigation, he attended the spot and recorded the statements of witnesses. Upon completion of the investigation, the final report was

submitted to the court, and the report regarding loss of MOs was marked as Ext.P5. The chemical analysis report is marked as Ext.P6.

12. During cross-examination, PW3 stated that the accused was not arrested in this case and denied the allegation that a false charge sheet was filed without conducting any investigation.

13. On a careful appraisal of the evidence adduced by the prosecution, namely PW1 to PW3, along with Exts.P1 to P6, it is evident that there are serious procedural deficiencies in the seizure, sampling, sealing, custody, and forwarding of the contraband allegedly recovered from the accused. PW1 and PW3 have not clarified who produced the collected samples before the Magistrate, and Ext.P3, property list does not indicate the description of the seal affixed on the sample bottles. There is also no evidence regarding the person who transported the samples from the Court to the Chemical Analysis Laboratory. In the absence of such evidence, the prosecution has failed to establish that the samples drawn from the contraband seized from the accused were safely preserved and reached the laboratory without any possibility of tampering.

14. Reliance is placed on the decision of the Hon'ble High Court of Kerala in ***Vijayan @ Puthoor Vijayan v. State of Kerala***, 2021 (5) KHC 347, where the Court emphasized that strict compliance with the procedures relating to sample collection, affixation of specimen seal, production before

the Magistrate, and safe custody by the Thondy Clerk and Chemical Examiner is mandatory. In the present case, neither the official who had custody of the sample nor the Thondy Clerk of the Court was examined. This omission deprives the Court of assurance regarding tamper-proof handling and breaks the chain of custody, which is fatal to the prosecution case. In that case Hon'ble High Court held as under:

Abkari Act 1077 – S.8(1), S.8(2) - Drawing of sample and steps to be followed by Thondy Clerk and measures to be ensured by Chemical Examiner Enumerated.

Steps to be followed by the Officer collecting the sample:

- (i) Collection of sample from the alleged contraband by the officer concerned shall be transparent eschewing possibility of tampering the sample in any manner;
- (ii) While collecting sample, the officer shall describe the nature of the specimen seal in the mahazar and the specimen seal shall be affixed on the mahazar, on the sample bottle, bottle containing the remaining part of contraband and the forwarding note;
- (iii) The sample so collected shall be produced before the jurisdictional Magistrate without any delay and the delay if any, shall be properly explained;
- (iv) Specimen seal affixed on the sample should be produced before the court along with the contraband for comparison;

(v) The said officer shall depose about compliance of the above before the court while giving evidence.

Steps to be followed by Thondy Clerk who is authorised to receive the thondy:

(I) The Thondy Clerk shall verify the specimen seal produced before the court and to compare the same with a seal affixed in the mahazar, collected sample and in the forwarding note to ensure that the seal of the sample is intact and there is no scope for tampering the same in between its collection and production before the court;

(ii) While forwarding the sample to the laboratory, the Thondy Clerk shall ensure that specimen sample seal is affixed on the forwarding note;

(iii) The forwarding letter shall contain the name of the official who is entrusted to handover the sample to the Chemical Examiner;

(iv) Specimen seal also to be provided to the Chemical examiner for verification and to ensure that the specimen seal, so provided, is tallying with the seal affixed on the sample, to rule out the possibility of tampering while on transit of the sample;

(v) Thondy Clerk must be examined to prove compliance of the above, also to prove that he has been in custody of the sample from the date of receipt of sample till the date of forwarding and also to prove compliance of item No.(i) to (iv) steps stated herein above.

Measures to be ensured by the Chemical Examiner:

(i) Chemical Examiner shall ensure production of specimen seal to verify as to whether the specimen seal provided in the forwarding note and the sample forwarded are tallying to rule out tampering of a sample during transit;

(ii) In the chemical analysis report the said fact shall be stated so as to act upon the same without examining the Chemical Examiner as provided under S.293 Cr.P.C.

In the dictum laid down in the decision referred above, it was held that the property clerk who have received sample from the detecting officer is to be examined in court to ascertain the compliance of the procedure for tamper proof collection of sample.

15. Further, the prosecution has not established that proper sampling procedure was followed. There is no evidence to show that more than one representative sample was drawn or that the specimen seal was produced before the Court for verification. In decisions such as ***Velayudhan v. State of Kerala*** (Crl.A. No. 27/2006), ***Ponnappan v. State of Kerala*** (Crl.R.P. No. 2316/2011), and ***Ashokan v. State of Kerala*** (2016 (2) KLT 762), it has been consistently held that non-compliance with proper sampling and sealing procedures is fatal to the prosecution case.

16. It is also noted that though the sample was forwarded to the Chemical Analysis Laboratory on 19/02/2021 and analysed on 30/09/2021, the Chemical Analysis Report, Ext.P6, was received by the Court only on 20/10/2021. The prosecution has offered no explanation for the delay in

conducting the chemical analysis. In **Thomas @ Joy v. State of Kerala (2021 (5) KHC 410)**, it was held that unexplained delay in chemical analysis in Abkari cases raises reasonable doubt regarding the safe custody and tamper-proof condition of the sample and is fatal to the prosecution case. In the decision it was held as under:

“Abkari Act, 1077 – S.8(2) – Possession of nine litres of illicit arrack in a can – Sample reached laboratory on 04/12/2003, but same was analysed only on 23/12/2004 – Held, unexplained delay in the analysis of sample is fatal to the prosecution”.

17. The accused was not apprehended during the search, and his identification was not properly recorded in Ext.P1 (seizure mahazar) or Ext.P2 (occurrence report). In the absence of immediate apprehension or proper identification, the subsequent identification of the accused in Court is of doubtful reliability. Reliance is placed on **Nadarajan @ Selvarajan v. State of Kerala (2020 KHC 4555)** in this regard. These factors further cast doubt on the prosecution case.

18. Further, the prosecution has not satisfactorily proved compliance with the procedure under Section 53A of the Kerala Abkari Act. There is no convincing evidence to show that the seized contraband was properly inventoried and dealt with in accordance with statutory requirements. In **Balakrishna Rai v. State of Kerala (2020 (3) KHC 286)**, it was held that non-

compliance with such mandatory provisions renders the seizure doubtful and affects the prosecution case adversely.

19. In view of the above discussion and upon appreciation of the entire evidence on record, this Court finds that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. The accused is therefore entitled to the benefit of doubt. Accordingly, Point Nos.1 and 2 are answered against the prosecution.

Point No.3 :-

20. In the result, the accused is found not guilty for the offence punishable under section 55(i) of Abkari Act and he is acquitted U/S.235 (1) of Cr.P.C. Bail bond executed by the accused stand cancelled and he is set at liberty.

Dictated to the Confidential Assistant, typed by her, corrected by me and pronounced in open court on the 17th day of April, 2026.

Sd/-
REENA DAS T.R.
ADDITIONAL SESSIONS JUDGE

APPENDIX

Exhibits for the prosecution :-

P1	- 01.02.2021	: Seizure Mahazer
P2	- 01.02.2021	: Crime and Occurrence report
P3	- 01.02.2021	: Property list

P4 - 01.02.2021 : Forwarding Note
P5 - 07.02.2026 : Report regarding loss of MOs.
P6 - 30.09.2021 : Chemical Analysis Report

Exhibits for the defence : Nil

Witness for the prosecution

PW1 - 10.02.2026 : Chellappan
PW2 - 27.02.2026 : S.Unnikrishna Pillai
PW3 - 13.03.2026 : Prasannan G

Witness for the defence : Nil

Material Objects : Nil

Sd/-
REENA DAS T. R.,
ADDITIONAL SESSIONS JUDGE.

Typed by : Ullas B.
Compared by : Jayakrishnan P

**TABULAR FORM TO BE APPENDED TO THE JUDGMENT AS PER RULE 132
OF CRIMINAL RULES OF PRACTICE KERALA, 1982.**

Description of the Accused

1. Serial No. : Sessions Case No.662 /2022
(C.P. No.14/2022 on the file of the Judicial
Magistrate of First Class, Karunagappally)
2. Crime No. and name of Excise Range : Crime No.26 /2021 of Karunagappally Excise
Range Office.
3. Name of accused : Babu
4. Father's Name : Nanu
5. Residence : Oruvukkara Varumbukalil Veedu, Kollara Muri,
Vadakkumthala Village, Karunagappally.
6. Occupation : --
7. Age : 60/2021
8. Occurrence : 01.02.2021
9. Complaint : 01.02.2021
10. Apprehension : --
11. Release on bail : --
12. Commitment : 31.03.2022
13. Commencement of trial : 10.02.2026
14. Date on which trial closed : 13.03.2026
15. Sentence or Order : 17.04.2026
16. Name & Designation of the committing Magistrate : Smt. Rekha Laurian,
Judicial First Class Magistrate, Karunagappally.
17. Explanation for delay : ...

Sd/-

ADDITIONAL SESSIONS JUDGE

Typed by : Ullas B.
Compared by : Jayakrishnan P

**CALENDAR STATEMENT IN THE ADDITIONAL SESSIONS COURT(ABKARI
CASES), KOTTARAKKARA IN SC.662 /2022**

1. Serial No. : Sessions Case No.662 /2022
(C.P. No.14/2022 on the file of the Judicial
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9. Complaint : 01.02.2021
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17. Explanation for delay : ...

Sd/-

ADDITIONAL SESSIONS JUDGE

Typed by : Ullas B.
Compared by : Jayakrishnan P