

IN THE COURT OF SESSIONS, KOLLAM DIVISION

Present:- Smt. Reena Das T.R., Additional Sessions Judge,
Additional Sessions Court (Abkari Cases), Kottarakkara.

On Wednesday, 25th day of March, 2026 / 4th day of Chaithra, 1948.

SESSIONS CASE No.768 /2022

(C.P. No.32 /2022 on the file of the Judicial Magistrate of First Class-I,
Punalur in Crime No.115/2020 of Anchal Excise Range)

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

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

Accused : Shainu, aged 42/2020, S/o.Sathyan,
Vazhavilayil Veedu, Edamon-34,
Edamon Village, Punalur Taluk.

(By Adv. Sri. V.Jayaprakash)

Charge : Offence punishable U/s.55(g) of the Kerala
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 : 13.03.2026

Date on which trial
closed : 18.03.2026

No. of days the case : 2 days
stood posted for trial

This case having been finally heard on 24.03.2026 and the Court on
25.03.2026 delivered the following:-

J U D G M E N T

This is a case charge sheeted by the Excise Inspector, Anchal in Crime No.115/2020 of Anchal, Excise Range Office against the accused alleging offences punishable under Sections 55(g) of the Kerala Abkari Act.

2. The prosecution case is that on 03/12/2020 at 12:30 P.M., the Excise Inspector of Anchal Excise Range Office found the accused in possession of 25 litres of wash at Udayagiri, Edamon, 34 Edamon Village, intended for the illegal manufacture of arrack. It is contended that these acts constitute an offence punishable under Section 55(g) of the Kerala Abkari Act.

3. Upon filing the final report, JFCM-I Punalur took cognizance of the alleged offence as CP No.32/2021 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 55(g) 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 were 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 03/12/2020 at 12:30 P.M., possess 25 litres of wash, intended for the illegal manufacture of arrack, at Udayagiri, Edamon, 34 Edamon Village, which was detected by the Excise Inspector of Anchal Excise Range Office, thereby committing an offence punishable under Section 55(g) 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 and PW2 and marked Exts.P1 to P14 documents and no material objects were marked.

8. PW1 was the Excise Inspector of Anchal Excise Range. He deposed that on 03/12/2020, he prepared the Occurrence Report in

connection with the seizure, marked as Ext.P1. He also prepared the property list and forwarding note, marked as Exts.P2 and P3. During the investigation, the accused was arrested, witnesses were examined and their statements recorded, with arrest documents marked as Ext.P4 series. The seized sample and other materials were produced before the Deputy Excise Commissioner, Kollam, under Section 53A, and PW1 appeared at the crime scene, preparing rough sketches marked as Exts.P5 and P6. The final investigation report was submitted to the court, with Chemical analysis report Ext.P7, possession certificate from the Panchayat Secretary Ext.P8, photographs of seized materials Ext.P9, certificate of inventory Ext.P10, acceptance of 53A receipt Ext.P11, and inventory prepared by the Deputy Excise Commissioner Ext.P12 are marked.

9. During cross-examination, PW1 admitted that the accused was not arrested at the scene, only one sample was taken, and the officer who transported the sample to the chemical lab was not examined. No currency notes were recovered from the accused. PW1 denied that he had falsely stated any facts, or filed the charge sheet without proper investigation, and asserted that the accused was present at the scene of the incident.

10. PW2 was the Preventive Officer at Anchal Excise Range Office. He deposed that on 03/12/2020, while on patrol at 12:30 P.M., he proceeded to the house of the accused at Satram Junction based on information that the accused was storing liquor. A search memo was prepared and sent to the court, and the house was searched. In the kitchen, PW2 found brown liquid stored in a 5-litre jar and in two cans beneath the slab, which on examination was identified as wash for distilling liquor. A 10-litre black-and-white kanna was also full of wash. Since the accused was not present, he could not be arrested at that time. Two 750 ml glass bottles of the wash were collected as samples, sealed according to law, while the remaining wash was destroyed. The search memo and seizure mahazar were marked as Ext.P13 and Ext.P14 respectively, and photographs of the seized materials were marked as Ext.P9. PW2 later appeared at the Range Office with the records and property and gave a statement to the investigating officer.

11. During cross-examination, PW2 denied that the accused did not live in the house or that he had no connection with the seized materials.

12. On a careful consideration of the oral evidence of PW1 and PW2, along with the documentary evidence marked as Exts.P1 to P14, it is apparent that the prosecution has not demonstrated strict compliance

with the mandatory procedural safeguards prescribed under the Kerala Abkari Act. Although the alleged seizure was effected on 03/12/2020, the seized articles and the sample were produced before the court only on 09/12/2020. No satisfactory explanation has been offered by the prosecution for this delay. In ***Vijayan @ Puthoor Vijayan v. State of Kerala*** (2021 (5) KHC 347), the Hon'ble High Court of Kerala emphasized that strict compliance with the procedures relating to sampling, sealing, and prompt production before the court is mandatory in Abkari cases to prevent tampering. The Court outlined the steps to be followed by the officer collecting the sample, the Thondy Clerk, and the Chemical Examiner to ensure the integrity of the contraband and the sample throughout the process. 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.

13. In the present case, the prosecution has not examined the official who had custody of the sample after seizure, and the Thondy Clerk was not examined to establish safe custody and compliance with the mandatory procedures. There is also no evidence that the specimen seal was produced before the court for verification. These omissions cast serious doubt on the integrity of the sample and are fatal to the prosecution case.

14. Further, in the present case, only one sample of 200 ml was drawn from the seized liquor, whereas settled legal position mandates drawing two representative samples. In ***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), the Hon'ble High Court of Kerala has consistently held that non-compliance

with the mandatory requirements relating to proper sampling and sealing would vitiate the prosecution case.

15. It is also noted that although the sample was forwarded to the Chemical Analysis Laboratory on 24/12/2020 and analysed on 06/09/2021, the Chemical Analysis Report Ext.P7 was received by the court only on 20/09/2021. No explanation has been provided for this delay. In ***Thomas @ Joy v. State of Kerala*** (2021 (5) KHC 410), it was held that unexplained delays in chemical analysis in Abkari cases are fatal to the prosecution case, as they raise reasonable doubt regarding the safe custody and tamper-proof condition of the sample. 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”.

16. Furthermore, 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 prosecution case doubtful.

17. Another critical aspect is the question of possession. PW2 deposed that on 03/12/2020, while on patrol, he reached the accused's house based on information that the accused was storing liquor. The wash was found in the kitchen and in two cans beneath the slab. As per Ext.P8, the house does not belong to the accused. The prosecution has not established that the accused had exclusive possession, dominion, or conscious control over the premises or the alleged contraband. In ***Kumaran Narayanan v. State of Kerala*** (2022 (3) KLJ 982) and ***V.P. Rajappan v. State of Kerala*** (2015 (4) KLJ 748), it was held that mere presence of contraband in a premises is insufficient to fasten criminal liability unless conscious possession is proved.

18. The prosecution has also failed to convincingly establish the identity of the accused at the scene. The accused was not apprehended at the place of occurrence, and no physical description or identifying features of the person allegedly present at the scene are recorded in Ext.P1 Occurrence Report or Ext.P14 Seizure Mahazar. In such circumstances, dock identification by PW1 and PW2, without prior test identification or corroborative evidence, cannot be safely relied upon. In ***Nadarajan @ Selvarajan v. State of Kerala*** (2020 KHC 4555), it was

held that dock identification in the absence of reliable corroboration is a weak piece of evidence.

19. In view of the above considerations and after a careful appraisal of the entire evidence, this Court finds that the prosecution has failed to prove the allegations against the accused beyond reasonable doubt. The accused is therefore entitled to the benefit of doubt, and the charges against him cannot be sustained. 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 sections 55(g) of Abkari Act and he is acquitted U/S.235(1) of Cr.P.C. Bail bond executed by the accused stands 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 25th day of March, 2026.

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

APPENDIX

Exhibits for the prosecution:-

P1	- 03.12.2020	: Crime and Occurrence report
P2	- --	: Property list

P3	- --	: Forwarding Note
P4 series	- 19.02.2021	: Arrest memo and Arrest notice
P5	- 04.01.2021	: Mahazer
P6	- 04.01.2021	: Rough sketch
P7	- 06.09.2021	: Chemical Analysis Report
P8	- 29.12.2020	: Possession certificate
P9	- --	: Photograph
P10	- 03.02.2021	: Certificate of Inventory
P11	- 03.12.2020	: Acknowledgment of receipt
P12	- 17.12.2020	: Inventory
P13	- 03.12.2020	: Search memo
P14	- 03.12.2020	: Seizure Mahazar

Exhibits for the defence : Nil

Witness for the prosecution

PW1 - 13.03.2026 : Biju N Baby
PW2 - 18.03.2026 : G.Bijukumar

Witness for the defence : Nil

Material Objects : Nil

Sd/-
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.768 /2022
(C.P. No.32 /2021 on the file of the
Judicial Magistrate of First Class-I,
Punalur) |
| 2. Crime No. and name of
Excise Range | : Crime No.115/2020 of Anchal Excise
Range |
| 3. Name of accused | : Shainu |
| 4. Father's Name | : Sathyan |
| 5. Residence | : Vazhavilayil Veedu, Edamon-34,
Edamon Village, Punalur Taluk. |
| 6. Occupation | : - |
| 7. Age | : 42/2020 |
| 8. Occurrence | : 03.12.2020 |
| 9. Complaint | : 03.12.2020 |
| 10. Apprehension | : 19.02.2021 |
| 11. Release on bail | : 23.03.2021 |
| 12. Commitment | : 07.04.2022 |
| 13. Commencement of trial | : 13.03.2026 |
| 14. Date on which trial closed | : 18.03.2026 |
| 15. Sentence or Order | : 25.03.2026 |
| 16. Name & Designation of
the committing Magistrate | : Smt.Ampili Chandran,
Judicial First Class Magistrate-I, Punalur. |
| 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.768 /2022**

- | | | |
|--|---|---|
| 1. Serial No. | : | Sessions Case No.768 /2022
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the committing Magistrate | : | Smt.Ampili Chandran,
Judicial First Class Magistrate-I, Punalur. |
| 17. Explanation for delay | : | ... |

Sd/-

ADDITIONAL SESSIONS JUDGE