

IN THE COURT OF SESSIONS, KOLLAM DIVISION

Present:- Smt. Reena Das T.R., Additional Sessions Judge,
Additional Sessions Court (Abkari Cases), Kottarakkara.
Monday, the 20th day of April, 2026 / 30th Chaithram 1948.

SESSIONS CASE No.831 /2022

(C.P. No.36/2022 on the file of the Judicial Magistrate of First Class-I,
Kottarakkara in Crime No.42 /2021 of Ezhukone Excise Range)

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

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

Accused : Sandhu Krishnan @ Appu, aged 30/2021,
S/o.Ramakrishnan, Padinjattathil Veedu,
S.N.Puram, Puthuchira Desom, Pavithreswaram,
Kottarakkara.

(By Adv. Sri.S.Pushpanandan)

Charge : Offence punishable U/s.55(g)
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 : 13.04.2026

Date on which trial
closed : 13.04.2026

No. of days the case : 1 day
stood posted for trial

This case having been finally heard on 18.04.2026 and the Court on
20.04.2026 delivered the following:-

JUDGMENT

This is a case charge sheeted by the Excise Inspector, Ezhukone in Crime No.42/2021 of Ezhukone, Excise Range Office against the accused alleging offences punishable under Section 55(g) of the Kerala Abkari Act.

2. The prosecution case, in brief, is that on 07/05/2021 at about 11.45 AM., the accused was found in possession of 105 litres of wash intended for the manufacture of arrack at the house of one Ramakrishnan, namely Padinjattathil Veedu, situated at S.N. Puram, Puthuchira Desam, in Pavithreswaram Village, in contravention of the provisions of the Abkari Act. By the aforesaid act, the accused is alleged to have committed an offence punishable under Section 55(g) of the Kerala Abkari Act.

3. Upon filing the final report, JFCM Ezhukone took cognizance of the alleged offence as CP No.36/2022 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(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. The accused filed an additional statement under Section 313(1)(b) of the Code of Criminal Procedure, stating that he is innocent. He filed a statement and stated that the ownership certificate produced by the prosecution does not pertain to his father, Ramakrishnan. He further submitted that the house alleged to have been searched by PW1 is situated in a ward different from that of his father. According to him, the ownership certificate produced by the prosecution relates to House No.17/153, which belongs to him; however, he asserted that neither he nor his father has any connection with the said house or with the house allegedly searched by PW1. He maintained that the case against him is false and that he is innocent.

6. Heard both sides.

7. Following are the points arising for consideration:-

1) Did the accused, on 07/05/2021 at about 11.45 AM, have in his possession 105 litres of wash intended for the manufacture of arrack at the house of one Ramakrishnan, Padinjattathil Veedu, situated at S.N. Puram, Puthuchira Desam, in Pavithreswaram Village, in contravention of the provisions of the Abkari Act, and thereby commit 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?*

8. Point Nos. 1 and 2 :-

To prove the case, prosecution has examined PW1 and PW2 and marked Exts.P1 to P10 documents and no material objects were marked.

9. PW1 was the Excise Range Inspector, Ezhukone. He deposed that on 07/05/2021, while on patrol duty at S.N. Puram, Ilayadi Junction, he received information that the accused, Santosh @ Appu, was in possession of wash and distillation apparatus at his residence. Accordingly, he prepared a search memo and proceeded to the house of one Ramakrishnan, Padinjattathil Veedu at about 11.45 AM. Finding the house open and unoccupied, he conducted a search in the presence of witnesses and detected three cans buried near the southern wall containing a liquid suspected to be wash. On examination, the liquid was identified as wash intended for the manufacture of arrack, totalling about 105 litres. He also seized utensils and equipment allegedly used for distillation. A sample of 500 ml was collected, sealed, labelled, and the remaining wash was destroyed at the spot. The articles were seized under Ext.P2 mahazar, and the search list was marked as Ext.P1. He registered the occurrence report Ext.P3 and prepared the property list and forwarding note Exts.P4 and P5. He also identified the photograph of the

seized articles Ext.P6 and stated that the properties were produced before the Deputy Excise Commissioner.

10. In cross-examination, PW1 admitted that he had not verified the ownership documents of the house, had collected only one sample, and had not recorded specimen seal details in the mahazar or produced such details before the court. He also stated that proceedings under Section 53A were not conducted before the Magistrate. However, he denied the suggestion that the accused had no connection with the house or the seized articles.

11. PW2 was the Excise Range Inspector, Ezhukone. He took over the investigation in the case registered by PW1. During the course of investigation, he recorded the statements of witnesses and obtained the ownership certificate from the Pavithreswaram Village Office, which was marked as Ext.P7. He also produced the Chemical Analysis Report Ext.P8, certificate of inventory Ext.P9 and the report regarding compliance of Section 53A of the Abkari Act Ext.P10. After completing the investigation, he laid the final report before the court.

12. In cross-examination, PW2 admitted that the independent witnesses had not stated the details regarding the container from which the sample was taken or the nature of the seal impression. He further stated that the specimen seal of the detecting officer was not recorded in Ext.P5. He also deposed that the Panchayat certificate shows that Ward No.17/153

corresponds to old No.173, and that no document was produced to establish that the accused is the son of Ramakrishnan. However, he denied the suggestion that the charge sheet was filed without proper investigation or that the accused had no connection with the house or the seized articles.

13. On a careful scrutiny of the oral evidence of PW1 and PW2 and the documentary evidence marked as Exts.P1 to P10, this Court finds that the prosecution has failed to establish strict compliance with the mandatory procedural safeguards prescribed under the Kerala Abkari Act. Though the alleged seizure was effected on 07/05/2021, the seized articles and samples were produced before the court only on 17/06/2021. No satisfactory explanation has been offered by the prosecution for the said delay. In ***Vijayan @ Puthoor Vijayan v. State of Kerala (2021 (5) KHC 347)***, the Hon'ble High Court of Kerala has emphasised that strict adherence to the procedure relating to sampling, sealing, production before court, and maintenance of tamper-proof custody is mandatory in Abkari cases. 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.

14. It is well settled that the prosecution must establish an unbroken chain of custody of the seized contraband and the samples from the stage of seizure till the stage of chemical analysis. In the present case, neither the officer who had custody of the sample after seizure nor the Thondy Clerk of the Magistrate Court was examined to prove safe custody and proper handling of the sample. There is also no evidence to show that the specimen seal was produced before the court for verification. These omissions create serious doubt regarding the integrity of the sample and are fatal to the prosecution case.

15. The settled legal position further mandates that proper and representative samples must be drawn and duly sealed in accordance with law. In the present case, only one sample was admittedly collected. The Hon'ble High Court, 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), has consistently held that non-compliance with the requirements relating to proper sampling and sealing is fatal to the prosecution case.

16. It is also pertinent to note that though the sample was forwarded to the Chemical Analysis Laboratory on 13/07/2021, it was analysed only on a much later date, and the Chemical Analysis Report, Ext.P8 was received by the court only on 28/01/2022. No explanation has been offered by the

prosecution for the delay in conducting the chemical analysis. In **Thomas @ Joy v. State of Kerala** (2021 (5) KHC 410), it has been held that unexplained delay in chemical analysis in Abkari cases is fatal to the prosecution case, as it raises 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”.

17. Although the prosecution claims compliance with Section 53A of the Kerala Abkari Act, the records do not satisfactorily establish such compliance. The inventory prepared does not indicate the date of preparation, nor does it contain details regarding the custody of the seized articles. The records also do not conclusively show that the sample forwarded for chemical analysis was properly sealed and labelled. These procedural lapses adversely affect the credibility of the prosecution case.

18. Another crucial aspect to be considered is the question of possession. The prosecution case is that the contraband was recovered from a house allegedly belonging to one Ramakrishnan. However, PW2 has admitted in cross-examination that no document has been produced to establish that the accused is the son of Ramakrishnan. There is also no reliable evidence to

prove that the accused had exclusive possession or conscious control over the premises or the 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 has been held that mere recovery of contraband from a premises is not sufficient to establish possession unless conscious possession is proved.

19. The prosecution has also failed to convincingly establish the identity of the accused. The accused was not apprehended from the scene of occurrence. No identifying features of the person allegedly involved have been recorded in the occurrence report or seizure mahazar. In such circumstances, the dock identification made by PW1 and PW2, in the absence of prior identification or corroborative evidence, cannot be safely relied upon. In ***Nadarajan @ Selvarajan v. State of Kerala*** (2020 KHC 4555), it has been held that dock identification alone is a weak piece of evidence unless supported by other reliable materials.

20. In view of the above discussion and upon an 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:-

21. In the result, the accused is found not guilty for the offence punishable under section 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 20th day of April, 2026.

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

APPENDIX

Exhibits for the prosecution:-

P1	- 07.05.2021	: Search list
P2	- 07.05.2021	: Seizure Mahazer
P3	- 07.05.2021	: Crime and Occurrence report
P4	- 07.05.2021	: Property list
P5	- --	: Forwarding Note
P6	- --	: Photograph
P7	- 14.12.2021	: Ownership certificate
P8	- 27.12.2021	: Chemical Analysis Report
P9	- 22.07.2022	: Certificate of Inventory
P10	- 11.03.2026	: Report with regard to the compliance of 53A.

Exhibits for the defence : Nil

Witness for the prosecution

PW1 - 13.04.2026 : G.Rajan

PW2 - 13.04.2026 : Paulson 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.831 /2022
(C.P. No.36/2022 on the file of the Judicial
Magistrate of First Class-I, Kottarakara.)
2. Crime No. and name of Range Excise : Crime No.42 /2021 of Ezhukone Excise
Range Office.
3. Name of accused : Sandhu Krishnan@ Appu
4. Father's Name : Ramakrishnan
5. Residence : Padinjattathil Veedu, S.N.Puram,
Puthuchira Desom, Pavithreswaram,
Kottarakara.
6. Occupation : --
7. Age : 30/2021
8. Occurrence : 07.05.2021
9. Complaint : 07.05.2021
10. Apprehension : --
11. Release on bail : --
12. Commitment : 18.04.2022
13. Commencement of trial : 13.04.2026
14. Date on which trial closed : 13.04.2026
15. Sentence or Order : 20.04.2026
16. Name & Designation of the committing Magistrate : Sri.T.Jayakumar,
Judicial First Class Magistrate-I, Kottarakara.
17. Explanation for delay : ...

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

Typed by : Ullas B.
Compared by : Jayakrishnan P

**CALENDAR STATEMENT IN THE ADDITIONAL SESSIONS COURT(ABKARI
CASES), KOTTARAKKARA IN SC.831 /2022**

1. Serial No. : Sessions Case No.831 /2022
(C.P. No.36/2022 on the file of the Judicial
Magistrate of First Class-I, Kottarakara.)
2. Crime No. and name of Range Excise : Crime No.42 /2021 of Ezhukone Excise
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9. Complaint : 07.05.2021
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Judicial First Class Magistrate-I, Kottarakara.
17. Explanation for delay : ...

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

Typed by : Ullas B.
Compared by : Jayakrishnan P