

**IN THE COURT OF SESSIONS, KOLLAM DIVISION**

Present:- Smt. Reena Das T.R., Additional Sessions Judge,  
Additional Sessions Court (Abkari Cases), Kottarakkara.  
On Wednesday, the 1<sup>st</sup> day of April, 2026 / 11<sup>th</sup> Chaithram 1948.

**SESSIONS CASE No.1207 /2022**

(C.P. No.44 /2022 on the file of the Judicial Magistrate of First Class-II,  
Kottarakkara in Crime No.67 /2021 of Chadayamangalam Excise Range)

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

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

Accused : Bilfi, aged 46/2022, S/o.Sadasivan,  
Bilfi Bhavanam, Melkulangara Desam,  
Valakom, Kottarakkara.

(By Adv. Sri. R.Madhusoodanan Nair)

Charge : Offence punishable U/s.55(i) 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 : 27.02.2026

Date on which trial  
closed : 13.03.2026

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

This case having been finally heard on 30.03.2026 and the Court on  
01.04.2026 delivered the following:-

## **J U D G M E N T**

This is a case charge sheeted by the Excise Inspector, Chadayamangalam in Crime No.67/2021 of Chadayamangalam, Excise Range Office against the accused alleging offences punishable under Section 55(i) of the Kerala Abkari Act.

2. The prosecution case, in brief, is that on 10/04/2021 at about 7.30 P.M., at the shop known as Alummoottil Stores, owned by the accused, situated at Vayakkal Junction along Vayakkal–Ummannoor Road in Valakom Village, Kottarakkara Taluk, the accused was found in possession of 1.3 litres of IMFL for the purpose of sale. An amount of Rs. 300/-, alleged to be the sale proceeds of the liquor, was also seized. By these acts, the accused is alleged to have committed an offence punishable under Section 55(i) of the Kerala Abkari Act.

3. Upon filing the final report, JFCM - II Kottarakkara took cognizance of the alleged offence as CP No.44/2022 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 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 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 10/04/2021 at about 7.30 P.M., found in his possession 1.3 litres of IMFL for the purpose of sale, and an amount of Rs. 300/-, alleged to be the sale proceeds of the liquor, seized from him, at the shop, Alummoottil Stores, owned by him and situated at Vayakkal Junction along Vayakkal-Ummannoor Road in Valakom Village, Kottarakkara Taluk, and thereby committing 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 and PW2 and marked Exts.P1 to P9 documents and no material objects were marked.

8. PW1 was the Preventive Officer at the Kottarakkara Excise Circle Office. He deposed that on 10/04/2021, while patrolling with the

excise party near Tholikode Junction, he observed the accused allegedly selling liquor by pouring a colored liquid from a bottle into a glass and receiving cash from a person. On approaching the accused with witnesses, the accused allegedly fled, leaving a glass on the ground. Upon search, PW1 recovered 800 ml of liquor in a one-liter bottle, 150 ml in the glass, a 500 ml bottle of IMFL, and Rs. 300/- from the accused. Samples were collected from the recovered bottles, sealed, labelled, and taken into custody. The accused was arrested, and arrest documents, seizure Mahazar, and search list were prepared and marked as Ext.P1, Ext.P2, and Ext.P3 respectively. PW1 identified the accused in court and confirmed that the accused gave his statement before the investigating officer.

9. In cross-examination, PW1 admitted some procedural details were not recorded in the Mahazar, such as building number, shop license, and ownership details. He denied suggestions that no recovery took place or that the case was falsely registered. He confirmed the seal impression was recorded and that the accused was arrested at the scene.

10. PW2 was the Excise Range Inspector of Chadayamangalam. He took over the investigation of the case, visited the scene, and recorded statements of the witnesses. He obtained the

ownership certificate from Ummannur Grama Panchayat, which was marked as Ext.P4, and completed the investigation by submitting the final report to the court. The Chemical Analysis Report was marked as Ext.P5, and the report regarding loss of material objects was marked as Ext.P6. He identified the signatures on the occurrence report Ext.P7 and confirmed the property list and forwarding note prepared by the fifth witness Ext.P8 & P9.

11. In cross-examination, PW2 admitted that the ownership certificate was in the name of a person named Soumya, and the accused was living in the property on rent. The landlord and tenants were not made witnesses, as they were not directly related to the case. The rent arrangement was verified via an agreement, which was not produced in court. PW2 denied that the accused was added deliberately to protect anyone and confirmed that the accused had connections with the case and was involved in prior Abkari cases. He also stated that only the sample of the seized liquor was produced before the court, along with the tonidi list.

12. On a careful scrutiny of the oral evidence of PW1 and PW2 and the documentary evidence marked as Exts.P1 to P9, it is apparent that the prosecution has not established strict compliance with the mandatory procedural safeguards prescribed under the Kerala Abkari Act. The

alleged seizure was effected on 10/04/2021, but the seized articles and samples were produced before the court only on 16/04/2021. No satisfactory explanation has been provided for this delay. The Hon'ble High Court of Kerala, in ***Vijayan @ Puthoor Vijayan v. State of Kerala*** (2021 (5) KHC 347), emphasized that strict adherence to the procedure relating to sampling, sealing, production before the court, and maintenance of tamper-proof custody is mandatory in Abkari cases. The Court enumerated the steps to be followed by the officer collecting the sample, the Thondy Clerk, and the Chemical Examiner to ensure integrity of the sample and to avoid any possibility of tampering. 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. It is well settled that the prosecution must establish an unbroken chain of custody of the seized contraband and the samples from seizure until 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 raise serious doubts regarding the integrity of the sample and are fatal to the prosecution case.

14. The evidence also indicates that the investigating officer failed to draw samples from all the bottles, as required under Section 53 of the Kerala Abkari Act and the Excise Manual. Reliance is placed on ***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), where it was held that non-compliance with proper sampling procedures is fatal to the prosecution case.

15. It is further noted that the sample was forwarded to the Chemical Analysis Laboratory on 19/07/2021, analyzed only on 27/01/2022, and the Chemical Analysis Report (Ext.P5) was received by the Court on 05/02/2022. No explanation has been offered for this delay. In ***Thomas @ Joy v. State of Kerala*** (2021 (5) KHC 410), the Hon'ble High Court held that an unexplained delay in chemical analysis in Abkari cases is fatal, as it raises reasonable doubt regarding 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. Further, the prosecution has not satisfactorily proved compliance with the mandatory procedure under Section 53A of the Kerala Abkari Act. In ***Balakrishna Rai v. State of Kerala*** (2020 (3) KHC 286), it was held that non-compliance with the inventory and lawful disposal of seized contraband renders the seizure doubtful. In the present case, there is no convincing evidence to show that the seized articles were inventoried or dealt with strictly according to the statutory procedure.

17. Regarding the question of possession, PW2 admitted that the ownership certificate was in the name of a person named Soumya, and the accused was living in the property on rent. The landlord and other tenants were not made witnesses. No evidence has been adduced to establish that the accused had exclusive possession or conscious control over the premises or the contraband. Reliance is placed on ***Kumaran Narayanan v. State of Kerala*** (2022 (3) KLJ 982) and ***V.P. Rajappan v. State of Kerala*** (2015 (4) KLJ 748), where it was held that mere presence of contraband in premises is insufficient to fasten criminal liability unless conscious possession is proved.

18. As regards the alleged recovery of Rs. 300/-, no independent witness was examined to establish that the amount represented sale

proceeds of illicit liquor. In the absence of corroborative evidence of an actual sale, the prosecution has failed to prove retail sale of IMFL beyond reasonable doubt.

19. In view of the above circumstances and upon analysis 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. Points Nos. 1 and 2 are accordingly answered in favour of the accused.

**Point No.3:-**

20. In the result, the accused is found not guilty for the offence punishable under sections 55(i) 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 1<sup>st</sup> day of April, 2026.*

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

**APPENDIX**

**Exhibits for the prosecution:-**

P1 series - 10.04.2021 : Arrest memo and Arrest notice  
P2 - 10.04.2021 : Seizure Mahazer

P3 - 10.04.2021 : Search list  
P4 - 28.09.2021 : Ownership Certificate  
P5 - 27.01.2022 : Chemical Analysis Report  
P6 - 09.02.2026 : Report regarding loss of MOs.  
P7 - 10.04.2021 : Crime and Occurrence report  
P8 - 10.04.2021 : Property list  
P9 - - : Forwarding Note

**Exhibits for the defence** : Nil

**Witness for the prosecution**

PW1 - 27.02.2026 : Babusenar  
PW2 - 13.03.2026 : Anirsha S

**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.1207 /2022 ( C.P. No.44 /2022 on the file of the Judicial Magistrate of First Class-II, Kottarakara)
2. Crime No. and name of Range	:	Crime No.67 /2021 of Chadayamangalam Excise Range Office.
3. Name of accused	:	Bilfi
4. Father's Name	:	Sadasivan
5. Residence	:	Bilfi Bhavanam, Melkulangara Desam, Valakom, Kottarakkara.
6. Occupation	:	-
7. Age	:	46/2022
8. Occurrence	:	10.04.2021
9. Complaint	:	10.04.2021
10. Apprehension	:	10.04.2021
11. Release on bail	:	22.04.2021
12. Commitment	:	16.06.2022
13. Commencement of trial	:	27.02.2026
14. Date on which trial closed	:	13.03.2026
15. Sentence or Order	:	01.04.2026
16. Name & Designation of the committing Magistrate	:	Smt.Rajasree C.R, Judicial First Class Magistrate-II, Kottarakara.
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.1207 /2022**

- |  |   |  |
|--|---|--|
| 1. Serial No.  | : | Sessions Case No.1207 /2022<br>( C.P. No.44 /2022 on the file of the<br>Judicial Magistrate of First Class-II,<br>Kottarakara) |
| 2. Crime No. and name of<br>Range                      | : | Crime No.67 /2021 of Chadayamangalam<br>Excise Range Office.   |
| 3. Name of accused                                     | : | Bilfi  |
| 4. Father's Name                                       | : | Sadasivan  |
| 5. Residence   | : | Bilfi Bhavanam, Melkulangara Desam,<br>Valakom, Kottarakkara.  |
| 6. Occupation  | : | -  |
| 7. Age   | : | 46/2022  |
| 8. Occurrence  | : | 10.04.2021   |
| 9. Complaint   | : | 10.04.2021   |
| 10. Apprehension                                       | : | 10.04.2021   |
| 11. Release on bail                                    | : | 22.04.2021   |
| 12. Commitment   | : | 16.06.2022   |
| 13. Commencement of trial                              | : | 27.02.2026   |
| 14. Date on which trial closed                         | : | 13.03.2026   |
| 15. Sentence or Order                                  | : | 01.04.2026   |
| 16. Name & Designation of the<br>committing Magistrate | : | Smt.Rajasree C.R,<br>Judicial First Class Magistrate-II,<br>Kottarakara.   |
| 17. Explanation for delay                              | : | ...  |

Sd/-  
**ADDITIONAL SESSIONS JUDGE**