

In the Court of Sessions Division, Kollam

Present:

Sri. Santhosh Das, Asst. Sessions Judge, Karunagappally

Wednesday 1st day of April, 2026/ 11th day of Chaithra, 1948.**S.C No. 717/2019****(CP No.36/2018 of JFMC, Chavara)**

Complainant : State represented by the Sub Inspector of Police, Chavara in Crime No. 818/2018.
By Adv. Harilalji.C, Public Prosecutor

Accused : Santhosh, aged 45 years,
S/o.Karthikeyan, Puramchuttil veedu,
Neendakara muri, Neendakara village.
By Adv. C.Sajeendrakumar

Charge : Offence punishable u/s. 55(a) of Abkari Act.

Plea of accused : Not guilty

Finding of the court : Not guilty

Sentence or Order : Acquitted u/s.232 of Cr.PC

Dates of Trial and Hearing : 18.10.2022, 14.03.2023, 29.08.2024, 08.09.2025,
25.02.2026, 28.03.2026

This case having been finally heard on 01.04.2026 and on the same day the court delivered the following:-

JUDGMENT

1. This case arose on a final report filed by the Sub Inspector of Police, Chavara Police Station, in crime No. 818/18, against the accused, alleging the commission of the offence punishable u/s. 55(a) of the Abkari Act.
2. Going by the prosecution allegations in brief, on 19.07.2018 at about 04:15 pm while the Sub Inspector and his party were conducting L/O patrol duty, accused was found by them with a big-shopper bag, and getting suspicious accused was

searched whereupon it was found that the big-shopper bag and the shoulder bag carried by the accused were containing 30 bottles of IMFL, each containing 500 ml, and it was understood that the accused had collected the liquor bottles for its illicit second sale. Thus it is alleged by the police that the accused had committed the offence u/s. 55(a) of the Abkari Act.

3. After arrest formalities, accused was produced with remand report before the jurisdictional Magistrate on 20.07.2018, and in the light of the allegations, he was remanded to judicial custody, and was later granted bail vide order of the Hon'ble High Court of Kerala dated 03.08.2018 in BA No. 5132/2018, which order was executed on 04.08.2018.
4. Upon completing investigation, final report was filed before the Judicial Magistrate of First class Chavara and the case was taken on file as C.P No. 36/2018. After complying with S. 207 of CrPC the learned Magistrate committed the case to the Hon'ble Court of Sessions Kollam, vide order dated 08.11.2018 and later the case is made over to this Court for disposal as the case in hand.
5. Upon issuance of process, accused entered appearance and he was permitted to continue on crime stage bail. The case of the prosecution was opened by the Learned Prosecutor and he described the charge brought against the accused and stated by what evidence he proposes to prove the guilt of the accused.
6. Upon consideration of the entire records, and after hearing both sides, an opinion was formed that there is ground for presuming that the accused had committed an offence which is exclusively triable by the Court of Sessions, and accordingly charge was framed for the offence punishable u/s. 55(a) of the Abkari Act by my predecessor in office, and when the charge was read over and explained to the accused on 18/10/2022, he pleaded not guilty and claimed to be tried.

7. In the light of the denial of the charge, prosecution was directed to lead evidence to prove the charge. Prosecution cited CW1 to 5 in support of the charge, and after repeated opportunities presence of CW1 & CW2 were procured and they were got examined as PW1 & PW2 respectively. As regards the detecting officer and the accompanying officers, despite repeated opportunities their presence was not procured and defence finally invited attention to the evidence on record and pointed out that neither the contraband nor the certified inventory is produced by the prosecution and highlighted that the delay is causing hardships. In the circumstances, prosecution evidence was closed.
8. Both PW1 & 2 were examined as independent witnesses for vouching the detection, arrest and seizure, but both were not friendly to the prosecution. Having regard to the nature of evidence adduced by PW1 & 2, examination of the accused u/s.313(1)(b) CrPC was given up, and it was decided to hear both sides u/s. 232 of CrPC, and accordingly both sides were heard.
9. Considering the prosecution contentions, the following points arise for consideration:-
 1. Has the prosecution proved that the accused was possessing liquor bottles as claimed for its sale, as alleged ?
 2. Whether the accused is entitled to the benefit of the provisions of S.232 of CrPC ?
 3. Order ?

10. Point No. 1 :-

1. Prosecution evidence consists of the oral testimony of PW 1 & 2.

2. PW1 & 2 were examined as independent witness for vouching the detection, arrest & seizure, but in the box both denied having seen the alleged detection, arrest and seizure. Therefore, their evidence is not helping the prosecution. As regards the detecting officer and the accompanying officers, they were expected for giving evidence, but despite sufficient opportunity, their presence was not procured by prosecution.
3. Further, as rightly pointed out by the learned defence Counsel, neither the seized contraband nor the certified inventory & photograph that could be treated as primary evidence u/s. 53A(5) Abkari Act is produced by the prosecution in this case. It is therefore contended by the defence counsel that in the circumstances no amount of oral evidence will improve the prosecution case and conviction is not possible in the eyes of law. Further, it is pointed out that the property section (thondi section) Clerk of the Magistrate Court, and the official through whom the property (sample) reached the Magistrate Court, and the official through whom the sample was forwarded from the Magistrate Court to the Chemical Lab are not cited as witnesses in the final report, and it is added that the forwarding note available in the records by way of which the samples were forwarded to the chemical lab is not even having the name and particulars of the person who transported the samples. Therefore, there is scrap of material to find as to through whom the sample was forwarded to the Chemical Lab for its examination, it is said. There is merit in these contentions of the learned counsel. At any rate, it can be safely concluded that the procedures streamlined in '**Vijayan vs. State of Kerala**' reported in '**2021(5) KLT 321**', are not followed in the case in hand, giving room for serious doubt.
4. In a case of this nature, prosecution was required to produce either the seized contraband as such, or the certified inventory & photograph of the contraband,

which could be treated as primary evidence u/s. 53A(5) Abkari Act. When neither the contraband as such, nor its certified inventory & photograph that could be treated as primary evidence u/s. 53A(5) Abkari Act, is produced, no amount of oral evidence will improve the prosecution case and therefore conviction is ruled out. Any doubt in this regard can be settled at rest by a proper reading and understanding of the Judgment of the **Hon'ble High Court of Kerala** in '**Chandran @ Chandrasekharan v. State of Kerala**', reported in 2016 (4) KLT 727. Hon'ble High Court had held in that case as follows:-

"In this case, PW1 was admittedly not an authorised officer under Section 67B of the Abkari Act. Therefore, he was not an authorised officer competent to prepare the inventory under sub-section (2) of Section 53A of the Abkari Act. Since Ext. P7(a) was prepared by an officer not authorised under the Abkari Act, Ext. P7(a) cannot be acted upon as the same is patently illegal. When Ext. P7(a) cannot be acted upon, the entire contraband should have been produced before the Court. However, in this case, the contraband articles were not produced before the Court and instead of that, the prosecution relied on Ext. P7(a) inventory, which is patently illegal and consequently, the revision petitioner is entitled to acquittal".

5. At any rate, evidence adduced by the prosecution in the case in hand is not cogent enough to prove that the accused were on the wrong side of the law as alleged. It can be safely concluded that the entire allegations are not proved. Therefore this point can only be answered against the prosecution, which I do.

11. Point No.2:-

1. For the discussions on point No. 1 above, it is found that the prosecution evidence is not impeaching the accused by any means, and that .

2. It follows, this is a fit case in which the power of the Court u/s. 232 of CrPC can be exercised, for recording an order of acquittal.
3. This point is answered in favour of the accused.

12. Point No.3:-

1. In view of the findings on point Nos. 1 and 2 above, accused is found not guilty for the alleged offences u/s 55(a) of the Abkari Act.
2. In the result, accused is acquitted u/s. 232 of CrPC.
3. His bail bond stands cancelled, and he is set at liberty forthwith.

(Dictated to the C.A., typed by her, corrected by me and pronounced in open court on this the 01st day of April, 2026)

Sd/-
Santhosh Das
Asst. Sessions Judge.

APPENDIX

Exhibits for the Prosecution:- Nil

Exhibit for the Defence : Nil

Witnesses for the Prosecution :

PW1 Pushpangadan 14.03.2023

PW2 Santhoshkumar 14.03.2023

Witness for Defence : Nil

Material Objects marked : Nil

Tabular form as Rule 132 of Cr. PC

1. Serial No. : S.C No. 717/19
2. Name of Police Station
Cr. No. of offence : Sub Inspector of Police,
Chavara in Crime No.
818/2018.

Description of Accused

3. Name of accused : Santhosh
4. Father's Name : Karthikeyan
5. Occupation : --
6. Residence : Puramchuttill veedu, Neendakara Muri,
Neendakara.
7. Age : 45 years
8. Occurrence : 19.07.2018
9. Complaint : 19.07.2018
10. Apprehension : 19.07.2018
11. Release on bail : 04.08.2018
12. Commitment : 08.11.2018
13. Commencement of trial : 18.10.2022
14. Close of trial : 28.03.2026
15. Sentence or Order : 01.04.2026
16. Service of copy of Judgment
or finding on accused : Not given
17. Explanation of delay : No delay

Sd/-

Assistant Sessions Judge.

//True Copy//

Typed by: Sini.G

Compared by: Sunilkumar.S

Assistant Sessions Judge.