

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. 1181/2019

(CP No.52/2019 of JFMC, Karunagappally)

Complainant : State represented by the Excise Inspector,
Karunagappally Excise Range in Crime No.
27/2019.
By Adv. Harilalji.C, Addl. Public Prosecutor

Accused : A1 Dileepan, aged 54/19,
S/o.Purushothaman, Puthenpura veedu,
Pandarathuruth muri, Alappad village,
Karunagappally.
A2 Rajeswaran, S/o.Kalesan, aged 47/19,
Idayila veedu, Pandarathuruth muri,
Alappadu village.
By Adv. Sreenu Raveendran

Charge : Offence punishable u/s. 55(g) 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 : 19.12.2023, 04.06.2024, 08.07.2025, 11.12.2025,
20.02.2026, 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 Excise Circle Inspector, Excise Circle Office, Karunagappally in crime (OR) No. 27/19, against the accused persons

herein above, alleging the commission of the offence punishable u/s. 55(g) of the Abkari Act.

2. Going by the prosecution allegations in brief, on 06/02/19 while the Excise officials were on patrol duty, secret information was received that the accused persons have stashed 'wash' at the residence of the 1st accused for their joint brewing of arrack, and at about 05:30 pm Excise Officials, raided the house of the 1st accused at Alappadu Village, whereupon both accused were found engaged in the handling of 'wash' for the distilling of arrack, and such 'wash' was seized by the officials, and accused persons were arrested at the spot.
3. After arrest formalities, accused were produced with remand report before the jurisdictional Magistrate on 06/02/19, and in the light of the allegations, they were remanded to judicial custody, and was later enlarged on bail in terms of the Order of the Hon'ble Sessions Court dated 23.02.2019 in CrI.MP.No.307/2019, which order was executed on 23/02/2019.
4. Upon completing investigation, Excise Inspector (CW7) filed final report before the Judicial Magistrate of First class Karunagappally and the case was taken on file as C.P No. 52/2019. After complying S. 207 of Cr.P.C. the learned Magistrate committed the case to the Hon'ble Court of Sessions Kollam, vide order dated 17/08/2019 and later the case is made over to this Court for disposal as the case in hand.
5. Upon consideration of the entire records, and after hearing both sides, an opinion was formed that there is ground for presuming that the accused have committed an offence which is exclusively triable by the Court of Sessions, and accordingly charge was framed for the offence punishable u/s. 55(g) of the Abkari Act. When

the charge was read over and explained, both accused pleaded not guilty and claimed to be tried.

6. In the light of the denial of the charge, prosecution was directed to lead evidence to prove the charge. Prosecution cited CW1 to 7 in support of the charge, and after repeated opportunities presence of CW3 & CW4 were procured and they were got examined as PW1 & PW2 respectively. As regards CW1 & 2, the detecting officer and the accompanying officer, 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.
7. 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.
8. Considering the prosecution contentions, the following points arise for consideration:-
 1. Has the prosecution proved that the accused were engaged in the illicit brewing of arrack by possessing 'wash' on the relevant date and time, as alleged ?
 2. Whether the accused are entitled to the benefit of the provisions of S.232 of CrPC ?
 3. Order ?

9. Point No. 1 :-

1. Prosecution evidence consists of the oral testimony of PW 1 & 2.
2. PW1 & 2 are examined as independent witness for vouching the detection & seizure, but in the box both denied having seen the alleged detection and seizure. Therefore, their evidence is not helping the prosecution. As regards the detecting officer and the accompanying officer, both 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, and it is reported by the prosecution that the contraband is lost. 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. There is merit in that contention of the learned counsel.
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 it's 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.

10. 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.
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 accused.

11. Point No.3:-

1. In view of the findings on point Nos. 1 and 2 above, accused are found not guilty for the alleged offences u/s 55(g) of the Abkari Act.
2. In the result, accused are acquitted u/s. 232 of CrPC.
3. Their bail bonds stands cancelled, and they are 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 Ratheesh 04.06.2024

PW2 Ajimon 04.06.2024

Witness for Defence : Nil

Material Objects marked : Nil

Tabular form as Rule 132 of Cr. PC

- | | | | |
|----|---------------------------------------|---|---|
| 1. | Serial No. | : | S.C No. 1181/19 |
| 2. | Name of Ex.Off.
Cr. No. of offence | : | The Excise Inspector,
Karunagappally Excise Range in
Crime No. 27/2019. |

Description of Accused

- | | | | | |
|-----|--|---|---|---------------|
| 3. | Name of accused | : | A1 Dileepan | A2 Rajeswaran |
| 4. | Father's Name | : | A1- Purushothaman | A2- Kalesan |
| 5. | Occupation | : | -- | |
| 6. | Residence | : | A1- Puthenpura veedu,
Pandarathuruth muri,
Alappad village. | |
| | | | A2- Idayilaveedu,
Pandarathuruth muri,
Alappad village. | |
| 7. | Age | : | A1-54/19 | A2-47/19 |
| 8. | Occurrence | : | 06.02.2019 | |
| 9. | Complaint | : | 06.02.2019 | |
| 10. | Apprehension | : | 06.02.2019 | |
| 11. | Release on bail | : | 25.02.2019 | |
| 12. | Commitment | : | 17.08.2019 | |
| 13. | Commencement of trial | : | 19.12.2023 | |
| 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.