

In the Court of Sessions Division, Kollam

Present: Sri. Santhosh Das, Asst. Sessions Judge, Karunagappally
Tuesday 31st day of March, 2026/10th day of Chaithra, 1948.

S.C No. 1398/2019

(CP No.78/2019 of JFMC, Karunagappally)

Complainant : State represented by the Excise Inspector,
Excise Range Office, Karunagappally
in Crime No. 22/2019.
By Adv. Harilalji.C, Public Prosecutor

Accused : Santhoshkumar, aged 47/19,
S/o.Karthikeyan, Puramchutil veedu,
AMC Desam Puthenthura P,O,
Neendakara village, Karunagappally
By Adv. C.Sajeendrakumar

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

Plea of accused : Not guilty

Finding of the court : Not guilty

Sentence or Order : Acquitted u/s.235(1) CrPC.

Dates of Trial and Hearing : 24.02.2025, 10.02.2026, 21.03.2026, 24.03.2026,
28.03.2026.

This case having been finally heard on 31.03.2026 and on the same day the court delivered the following:-

JUDGMENT

1. This case arose on a final report filed by the Excise Inspector, Excise Range Office, Karunagappally in that Range crime No. 22/2019, against the accused person herein above, alleging the commission of the offences punishable u/s. 55(a) & 55(i) of the Abkari Act.

2. Going by the prosecution allegations in brief, upon receipt of secret information that the accused had stocked liquor bottles at his house for illicit second sale, 01/02/2019 at about 12:30 pm, the Excise Officials lead by the Preventive Officer, Special Squad, Excise Enforcement & Anti Narcotic, Kollam searched the house of the accused whereupon liquor bottles of various brands stashed for illicit second sale were searched out and seized. The total quantity of such seized liquor is 53.500 liters. Thus it is alleged that the accused had committed the aforesaid offences.
3. Accused was arrested at the spot, and after arrest formalities, he was produced with remand report before the jurisdictional Magistrate on 01/02/2019, 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, dated 27/02/2019 in Bail Application No. 1317/2019, which order was executed on 28/02/2019.
4. Upon completing investigation, Excise Inspector (CW6) filed final report before the Judicial Magistrate of First Class Karunagappally and the case was taken on file as C.P No. 78/2019. After complying with S. 207 of CrPC the learned Magistrate committed the case to the Hon'ble Court of Sessions Kollam, vide order dated 01/10/2019 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 offences punishable u/s. 55(a) & (i) of the Abkari Act. When the charge was read over and explained to the accused, 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 6, of which CW1, 4 & CW6 were got examined as PW1, 2 & PW3 respectively, and Exts. P1 to P11 were got marked. As regards CW2, 3 & 5, despite repeated opportunities their presence were not procured by prosecution for giving evidence and defence 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. Upon completing prosecution evidence as above, accused was examined u/s.313(1)(b) CrPC, on the incriminating circumstances appearing against him in the prosecution evidence, and the incriminating circumstances were denied.
9. Since there was no ground for an acquittal u/s. 232 of CrPC, accused was called upon to enter on his defence. However, there was no defence evidence adduced.
10. Heard both sides. According to the prosecution, the prosecution case is proved from the oral testimony of the detecting officer as PW1, which is corroborated by the contents of Ext. P4 search list & P3 mahazar. On the flip side, learned defence Counsel would submit that accused is framed by the officials for meeting their monthly targets. Evidence of the official witnesses as PW1 & 3, cannot be treated as gospel of truth in the facts and circumstances, submits the Counsel. Learned

Advocate further picked holes in the investigation by saying that there is serious breach in the chain of custody of the sample allegedly taken, which is fatal to the prosecution. Ratios were cited in support, and it is stoutly contended that the accused is entitled for an acquittal.

11. In the light of the rival contentions, the following points arise for consideration:
 1. Has the prosecution proved that the accused was found in possession of liquor bottles within the meaning of S. 55(a) Abkari Act on the relevant date and time, as alleged ?
 2. Is it proved by the prosecution that the accused was found in possession of liquor for its sale ?
 3. Whether the accused is guilty or not ?
 4. Sentence or order.

12. Point Nos. 1 to 3:

1. These points are considered together for the sake of convenience and for avoiding the repetition of appreciation of evidence.
2. Prosecution evidence consists of the oral testimony of PW 1 to 3 and Exts. P1 to P11.
3. PW1 is the detecting officer. He had spoken in his evidence about the patrolling, receipt of secret information, detection, search, seizure and arrest. He asserted that secret information was received that the accused is conducting

sale of liquor at his house, based on which information he proceeded to the house for its search, and that upon the search liquor bottles were seized, and further that in the body search of the accused, ₹ 8150/- was found and seized being the sale money.

4. PW3 is the investigating officer and admittedly he had no occasion to vouch the detection, search, seizure and arrest. PW2 was examined as the independent witness for vouching the search, seizure and arrest, but in the box he denied having seen the search, seizure and arrest.
5. Now, as rightly submitted by the learned defence Counsel, prosecution is heavily banking on the oral testimony of the official witness as PW1 for proving the occurrence. Also, heavy reliance is made by the prosecution on Ext. P4 search list and Ext. P3 mahazar to say that the accused was found possessing IMFL in violation of the provisions of Abkari Act and Rules. Of-course, there is no hard and fast rule that the testimony of the official witness is always to be supported and corroborated by independent witnesses. But, when the cited independent witness is not supporting the prosecution case, the evidence of the official witness can be looked only with great circumspection, no doubt.
6. Now, in the case in hand it is contended by the defence that there is serious breach in the chain of custody of the alleged contraband and sample. Of-course, in cases of this nature, the vital aspect to be proved by the prosecution is that the sample of liquor which reached the hands of the chemical examiner was the sample taken from the bottles allegedly seized from the accused on the date of the alleged incident. Now what are the material evidence to be tendered by the prosecution to arrive at such a conclusion ? In this regard, it is profitable to read the decision of the Hon'ble High Court of Kerala in '**Vijayan vs. State of**

Kerala , reported in '**2021(5) KLT 321**', wherein the Hon'ble High Court has streamlined the procedures to be followed by the officials in the matter. It is held in the said judgment in the following manner:-

“12. While summarizing the essential steps required to be followed to ensure tamper free collection and examination of the sample of the alleged contraband, the following measures to be followed:

13. 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.

14. Steps to be followed by the 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.

15. 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.

16. Unless and until the above safety measures are not ensured, it cannot be said that the sample of the contraband subjected to chemical examination by the Chemical Examiner is one collected from the possession of the accused. Any lacuna in this regard is a reason to disbelieve the recovery and the chemical analysis report. Consequently, the entire prosecution case would fail.”

7. Turning to the case in hand, 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 and they were not examined before the Court to establish the tamper free chain of custody. Even Ext. P7 forwarding note is not having the name and particulars of the officer who transported the sample. In fine, it can be safely concluded that the procedures streamlined in **‘Vijayan vs. State of Kerala’** are not followed in the case in hand, giving room for serious doubt. It follows, the chain of custody is not satisfactorily established and therefore the chemical certificate marked as Ext. P10 though speaks about the presence of Ethyl Alcohol in the samples, it cannot be said that it is proved beyond doubt that the

samples said to have been subjected to chemical examination were the samples taken from the bottles reportedly seized from the accused.

8. That apart, prosecution has neither produced the inventory u/s. 53A(2) nor produced the seized contraband before the Court. In the absence of certified inventory u/s. 53A(2), prosecution was bound to produce the contraband before the Court for the trial. It is pertinent to note that Hon'ble **High Court of Kerala** in '**Chandran @ Chandrasekharan v. State of Kerala**', reported in 2016 (4) KLT 727, had considered the legal effect of the inventory prepared by an officer who was not the authorised officer u/s 67B of the Abkari Act and it was held by the Court 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".

9. In the backdrop, prosecution evidence is not inspiring confidence in the mind of this Court to reach a finding of guilty. Suffice to say, accused are entitled for

a reasonable benefit of doubt and these points can only be answered against the prosecution, which I do.

13.Point No.4:-

1. For the findings and discussions on point No. 1 to 3 above, accused is found not guilty for the alleged offence u/s. 55(a) & 55(i) of Abkari Act.
2. This point is accordingly answered.

14.Point No. 5:-

1. In fine, accused is acquitted u/s. 235(1) CrPC.
2. His bail bond stands cancelled, and he is set at liberty forthwith.
3. The amount of ₹ 8150/- seized as the sale money, now held in the account of JFCM Karunagappally as TR 40/2019 will be returned to the acquitted person by that Court. Office of this Court will communicate the acquittal to that Court for steps regarding the disposal of the valuable property.

(Dictated to the C.A., typed by her, corrected by me and pronounced in open court on this the 31st day of March, 2026)

Sd/-
Santhosh Das
Asst. Sessions Judge.

APPENDIX
Exhibits for the Prosecution

- P1 : Arrest memo dated 01.02.2019 proved by PW1
P2 : Arrest Notice dated 01.02.2019 proved by PW1

- P3 : Mahazer dated 01.02.2019 proved by PW1
P4 : Search list dated 01.02.2019 proved by PW1
P5 : Crime and Occurrence report dated 01.02.2019 proved by PW3
P6 : Property list dated 02.02.2019 proved by PW3
P7 : Forwarding note dated 02.02.2019 proved by PW3
P8 : 53(A) Report dated 01.02.2019 proved by PW3
P9 : Remand report dated 01.02.2019 proved by PW3
P10 : Chemical report dated 14.08.2019 proved by PW3
P11 : Ownership certificate dated 15.06.2019 proved by PW3

Exhibit for the Defence : Nil

Witnesses for the Prosecution :

- PW1 : S.Nishad 10.02.2026
PW2 : Ravi 10.02.2026
PW3 : A Joseprathap 21.03.2026

Witness for Defence : Nil

Material Objects marked : Nil

Tabular form as Rule 132 of Cr. PC

1. Serial No. : S.C No. 1398/2019
2. Name of Ex.Off.
Cr. No. of offence : The Excise Inspector Karunagappally,
Excise Range in Crime No.22/2019

Description of Accused

3. Name of accused : Santhosh kumar
4. Father's Name : Karthikeyan

5.	Occupation	:	--
6.	Residence	:	Puramchuttil veedu, AMC Desam, Puthenthura P.O., Neendakara village.
7.	Age	:	47/19
8.	Occurrence	:	01.02.2019
9.	Complaint	:	01.02.2019
10.	Apprehension	:	01.02.2019
11.	Release on bail	:	28.02.2019
12.	Commitment	:	01.10.2019
13.	Commencement of trial	:	25.02.2025
14.	Close of trial	:	28.03.2026
15.	Sentence or Order	:	31.03.2026
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.