

In the Court of Sessions Division, Kollam

Present:

Sri. Santhosh Das, Asst. Sessions Judge, Karunagappally
Friday 10th day of April, 2026/ 20th day of Chaithra, 1948.

S.C No. 1260/2019**(CP No.68/2019 of JFMC, Karunagappally)**

Complainant : State represented by the Excise Inspector,
Excise Range, Karunagappally in
Crime No. 58/2018.
By Adv. Harilalji.C, Addl. Public Prosecutor

Accused : Prinjith, S/o.Vikraman, aged 31/19,
Padmavilasam veedu, Vellanathuruth muri,
Alappad village, Karunagappally.
By Adv.K.Bhaskaran Pillai

Charge : Offence punishable u/s. 55(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 : 12.07.2024, 04.02.2026, 23.02.2026, 21.03.2026,
27.03.2026, 28.03.2026, 01.04.2026, 06.04.2026

This case having been finally heard on 10.04.2026 and on the same day the court delivered the following:-

JUDGMENT

1. This case arose on a final report filed by the Excise Inspector, Excise Range Office, Karunagappally in crime (OR) No. 58/2018, against the accused 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, on the morning of 01.10.2018 while CW1 and his team were on patrol duty, secret information was received that the accused had stashed liquor bottles at his house for its illicit sale, and accordingly the house was raided by the Excise officials at about 06.30 am, whereupon accused was found at the house engaged in the illicit second sale of liquor, and that upon seeing the Excise party, the customer abandoned the purchased liquor bottle and fled from the spot. In the search of the house that followed, liquor bottles of various brands were found and seized, which the accused had stashed for its illicit second sale. The total quantity of such seized liquor (IMFL) is 25 liters. Thus it is alleged that the accused has committed the aforesaid offences.
3. After arrest formalities, accused was produced with remand report before the jurisdictional Magistrate on 01.10.2018, and in the light of the allegations, he was remanded to judicial custody, and was later granted bail vide order of the Hon'ble Sessions Court dated 31.10.2018 in CrI. M. C No. 1665/2018, which order was executed on 01.11.2018.
4. Upon completing investigation, final report was filed before the Judicial Magistrate of First class Karunagappally and the case was taken on file as C.P No. 68/2019. After complying with S. 207 of CrPC the learned Magistrate committed the case to the Hon'ble Court of Sessions Kollam, vide order dated 30/08/2019 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, it was found that there is no ingredients for attracting the offence u/s. 55(a) Abkari Act, whereas 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, namely the offence u/s. 55(i) Abkari Act, and accordingly charge was framed for the offence punishable u/s. 55(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 7 in support of the charge, of which presence of CW1,2, 6, & 7 were procured and they were got examined as PW2, PW1, PW3 & PW4 respectively, and Exts. P1 to P11 were got marked. Turning to the remaining witnesses, 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 PW2, which is corroborated by the documents produced as Exts. P1 to P11. It is added that the evidence of the

detecting officer is supported by the evidence of the accompanying officer as PW1. On the flip side, learned defence Counsel would submit that accused is framed by the Excise Officials for meeting their monthly targets. According to him, evidence of the detecting official and accompanying official cannot be treated as gospel of truth in the facts and circumstances. 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 engaged in illicit second sale of Indian made foreign liquor on the relevant date and time, as alleged ?
 2. Whether the accused is guilty or not ?
 3. Sentence or order.

12. **Point Nos. 1 and 2:**

1. Prosecution evidence consists of the oral testimony of PW1 to 4 and Exts. P1 to P11
2. PW2 is the detecting officer, and he has spoken in his evidence about the patrolling, detection, search and seizure. He asserted that secret information was received that the accused had stashed liquor bottles in his house in large quantity for second sale and that when the Excise team reached the house for search, the accused was found engaged in the illicit second sale of liquor, and that on seeing the Excise Officials approaching, his customer took to his heels

and fled from the spot, abandoning the purchased liquor bottle, but that the accused was nabbed at the spot and that upon the search of the house liquor bottles of various brands were found and seized. He also spoke in evidence about the taking of samples, and identified Ext. P1 as the mahazar prepared in the matter. PW1, the accompanying officer had spoken in evidence in tune with that of PW2, no doubt.

3. PW3 is the officer who registered Ext. P6 occurrence report and he prepared Ext. P7 property list, & Ext. P8 forwarding note. PW4 completed the investigation and laid the final report and he identified Ext. P11 ownership certificate of the house that was searched. Both PW3 & PW4 had no occasion to witness the detection, search and seizure.
4. Therefore, prosecution is heavily banking on the oral testimony of the official witness as PW2 & 1 to prove the detection, search and seizure. Also, heavy reliance is made by the prosecution on Ext. P1 mahazar, P2 arrest memo, P3 arrest notice, P4 search memo, P5 search list, P7 property list, P8 forwarding note, & P11 ownership certificate to say that the accused was engaged in the illicit second sale of IMFL and that liquor bottles of various brands were searched out from his house on the date and time. 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 independent witnesses cited are not examined, the evidence of the official witnesses can be looked only with great circumspection, no doubt.
5. 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.”

6. 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. Further, a perusal of Ext. P8 forwarding note would show that the space provided for filling up the name and particulars of the official through

whom the sample is to be forwarded to the Chemical Lab is left as blank. Therefore, there is no scrap of material to find as to through whom the sample was forwarded to the Chemical Lab for its examination. 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 it is pertinent to note that the chemical certificate showing the result of the examination of the samples said to have been taken is not seen produced.

7. That apart, prosecution has neither produced the inventory and photograph u/s. 53A(2) nor produced the seized contraband before the Court. In the absence of certified inventory and photograph 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".

8. Therefore, prosecution is bound to fail. 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 is entitled for a reasonable benefit of doubt and these points can only be answered against the prosecution, which I do.

13.Point No.3:-

1. For the discussions on point No. 1 and 2 above, accused is found not guilty for the alleged offence u/s. 55(i) of Abkari Act, and he is acquitted u/s. 235(1) CrPC.
2. 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 10th day of April, 2026)

Sd/-
Santhosh Das
Asst. Sessions Judge.

APPENDIX
Exhibits for the Prosecution

- P1 : Mahazer dated 01.10.2018 proved by PW1
P2 : Arrest memo dated 01.10.2018 proved by PW2
P3 : Arrest notice dated 01.10.2018 proved by PW2
P4 : Search memo dated 01.10.2018 proved by PW2
P5 : Search list dated 01.10.2018 proved by PW2
P6 : Crime and occurrence report dated 01.10.2018 proved by PW3
P7 : Property list dated 03.10.2018 proved by PW3

- P8 : Forwarding note dated 03.10.2018 proved by PW3
P9 : 53(A) Report dated 01.10.2018 proved by PW3
P10 : Remand report dated 01.10.2018 proved by PW3
P11 : Ownership certificate dated 31.12.2018 proved by PW4

Exhibit for the Defence : Nil

Witnesses for the Prosecution :

- | | | | |
|-----|---|------------------------|------------|
| PW1 | : | S.Madhusoodanan Pillai | 04.02.2026 |
| PW2 | : | C.K.Sajikumar | 23.02.2026 |
| PW3 | : | Joseprathap | 21.03.2026 |
| PW4 | : | Bijukumar.R | 27.03.2026 |

Witnesses for the Defence : Nil

Material Objects marked : Nil

Tabular form as Rule 132 of Cr. PC

- | | | | |
|----|--|---|--|
| 1. | Serial No. | : | S.C No. 1260/19 |
| 2. | Name of Ex. Off.
Cr. No. of offence | : | The Excise Inspector, Excise Range,
Karunagappally in Crime No.
58/2018. |

Description of Accused

- | | | | |
|----|-----------------|---|---|
| 3. | Name of accused | : | Prinjith |
| 4. | Father's Name | : | Vikraman |
| 5. | Occupation | : | -- |
| 6. | Residence | : | Padmavilasam veedu,
Vellanathuruth muri,
Alappad village. |
| 7. | Age | : | 31/19 |
| 8. | Occurrence | : | 01.10.2018 |

9.	Complaint	:	01.10.2018
10.	Apprehension	:	01.10.2018
11.	Release on bail	:	01.11.2018
12.	Commitment	:	30.08.2019
13.	Commencement of trial	:	12.07.2024
14.	Close of trial	:	06.04.2026
15.	Sentence or Order	:	10.04.2026
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.