

IN THE COURT OF THE ASST. SESSIONS JUDGE OF PAYYANNUR

Present:- **Smt.Alshari.A**, Asst. Sessions Judge

Monday, the 23rd day of March, 2026

(2nd Chaithra, 1947)

SESSIONS CASE No: 74 OF 2020

Committed by Sri.Manikandan.C.K, Judicial First Class Magistrate,
Payyannur, in C.P. No.115/2019 in Crime No.303/2019 of Cherupuzha
Police Station

Complainant	: The Station House Officer, Cherupuzha Police Station. (Prosecution conducted by P.V.Madhu, Additional Public Prosecutor)
Accused	: Shibi.C.V, Aged 48/2019, S/o.Varkky, Chirakunnel House, Thimiri amsom, Therthalli.
Defended by	: Adv. Anil Kumar.A
Charge	: U/s.55(i) of Abkari Act.
Plea of the Accused	: Not guilty.
Finding of the Judge	: Not guilty.
Sentence/Order	: The accused is not found guilty for the offence committed under Section 55(i) of the Abkari Act and he is acquitted under Sec. 235(1) Cr.P.C for the above offence. Bail bond executed by the accused is hereby cancelled and he is set at liberty.

J U D G M E N T

Accused put on trial by the S.H.O., Cherupuzha Police Station for the offence punishable under Section 55(i) of the Abkari Act.

2. **In to the vital facts:-** On 31.08.2019 at about 21.15 hours, near Cherupuzha Beverage Corporation, the accused was found in possession of liquor for the purpose of sale, in contravention of the provisions of the Abkari Act and thereby, the accused alleged to have committed the offence punishable under Section 55(i) of the Abkari Act.

3. Upon receiving final report, the Judicial First Class Magistrate Court, Payyannur has taken the case on file, as C.P. No.115/2019 as the offence alleged against the accused is exclusively triable by the Court of Session. The accused appeared and released on bail, and copies of all records on which the prosecution relied on were given to him, in compliance of Sec.207 Cr.P.C. The Magistrate committed the case against the accused to the Hon'ble Court of Session, Thalassery as per Sec.209(a) Cr.P.C which was taken on file and made over to this court for trial and disposal.

4. Pursuant to the process, the accused appeared before the Court. Additional Public Prosecutor opened the case in accordance with Sec.226

Cr.P.C and briefly stated about the evidence proposed to adduce, in support of the case against the accused. Thereafter, I perused the records and heard both sides in order to determine, whether it was a fit case, in which the accused has to be discharged u/s. 227 Cr.P.C or to be proceeded against him in accordance with Sec.228 Cr.P.C. From the facts highlighted by both and on perusal of the case records, I was of the opinion that there was prima facie case probalising prosecution version. Therefore, charge framed for the offence punishable under Section 55(i) of the Abkari Act and it was read over and explained to the accused, to which he pleaded not guilty and claimed to be tried. The case was then adjourned in terms of Sec.230 Cr.P.C, to enable the prosecution to adduce evidence in support of the case.

5. Prosecution examined PW1 to PW7 and Exts.P1 to P13 were marked. After closing the prosecution evidence, the accused was examined under Sec.313(1)(b) Cr.P.C to personally explain the incriminating circumstances brought out in prosecution evidence. He denied all the incriminating circumstances brought out in evidence against him, and mentioned the plea of innocence. The matter was heard as provided u/s.232 Cr.P.C. There were no grounds to acquit the

accused u/s.232 Cr.P.C and accused was called upon to enter on his defence. No defence evidence was adduced u/s.234 Cr.P.C.

6. Heard both sides.

7. Points that arose for consideration are:-

1) Whether the accused was found on 31.08.2019 at about 21.15 hours near Cherupuzha Beverage Corporation found in possession of liquor which were meant for sale in contravention of the provisions of the Abkari Act thereby the accused alleged to has committed the offence punishable under Section 55(i) of the Abkari Act.

2) Sentence or order?

8. **Point No.1:-** As per the case of prosecution, on 31.08.2019 at about 21.50 hours, at a place near to Cherupuzha Beverage Corporation, the accused was found in possession of Indian Made Foreign Liquor intended for sale in contravention of the provisions of the Abkari Act.

9. PW4 is the Detecting Officer who deposed that, while he was doing patrolling duty on 31.08.2019 along with CW2 and CW3, he got secret information that one person is selling liquor illegally and thereby, they reached in front of Beverage outlet at about 23.15 hours. On lightening torch, he could see one person holding a bag and taken one bottle contains some liquid and given the same to another person. The person who received the

bottle had given something in return to other person. When they saw the light of the torch, the person who bought the bottle had ran away from the place and when other person was about to escape, he was restrained by PW4. On inspection, PW4 came to know that the bottles contained in the bag was Indian Made Foreign Liquor and also an amount of ₹1770/- was seized from the person. PW4 was convinced that the said person was selling the liquor illegally in contravention to the provisions of Abkari Act. He arrested the person and the bottles were seized from him, out of that, two bottles were taken as sample. The seizure mahazar prepared by PW4 was identified, and marked as Ext.P4. The person who was found to be selling the liquor in contravention to the provisions of Abkari Act was arrested on preparation of arrest memo, which is marked as Ext.P5. The arrest intimation memo was marked as Ext.P6. Subsequently, a case was registered and the FIR was marked as Ext.P7. PW4 identified the polythene cover in rose colour to be seized from the accused and marked as MO2. The currency notes seized from the accused is produced and marked as MO1 series, identified by the PW4. PW4 had also identified the accused to be the person arrested by him. The seizure was affixed with specimen seal. On perusal of Ext.P4 seizure mahazar, it is referred to as S.H.O. seal to be affixed in the

sample bottles.

10. The Investigation Officer was examined as PW7. According to him, he produced the articles seized as per seizure mahazar, before the Court on preparing property list which is marked as Ext.P8. PW7 had prepared forwarding note for sending the contraband article to R.F.S.L, for chemical analysis. The forwarding note was produced and marked as Ext.P9. The inventory prepared by Deputy Excise Commissioner, attested by Thahasildar is produced and marked as Ext.P10. In Ext.P4 and Ext.P9, it can be seen that, both these documents are affixed with specimen seal. On going through Ext.P8, it can be seen that the properties were produced before the Court on 01.09.2019 which was entrusted to the officer concerned to produce the same on the next working day, that is on 02.09.2019. So there is no delay in producing the article before the Court.

11. As per the evidence of PW4, he had entrusted the articles to the Investigation Officer, who was examined as PW7. As per the evidence of PW7, he had produced the articles before the Court, on preparing Ext.P8 property list. As per Ext.P9 forwarding note, the articles were sent for analysis on 23.09.2019 and as per Ext.P9 the forwarding note was submitted only on 16.09.2019, even though the properties were produced on

02.09.2019. According to PW7, he had entrusted one of the Police official to take the articles to the Court. But he could not recollect that, with whom does he had entrusted the article to take the same to the Court. PW7 deposed that, there are documents available to show the same in the station and no such documents are seen produced. Also, the person with whom the articles were entrusted is not made a witness to the case.

12. PW7 had deposed that he had entrusted the one of the Police Official to take the articles to the Court. Then, he had stated that the properties were produced before the Court, through J.S of the Court. When he had not taken the articles, as per the evidence of PW7, then it is not discernible, how he could state that the articles were produced through J.S. Also, the person namely Abdul Jabbar, S.C.P.O through whom the articles were forwarded as per the forwarding note, was also not examined or arrayed as the witness to the case. So the evidence of the person who had produced article before the Court and the person who had taken the articles as per the forwarding note to the F.S.L, were not arrayed as witness or examined before this Court. So the unbroken chain of custody of the article could not be said to have established when the evidence of these persons are not available before the Court.

13. PW3 who accompanied PW4 had given evidence in tune with the evidence of PW4. PW3 is not independent witness. On the other hand, he had accompanied PW4. PW1 is a witness to Ext.P1 scene mahazar. PW6 is also witness to Ext.P1 scene mahazar. PW1 and PW6 had deposed that they had affixed signature in white paper. So their evidence is not sufficient prove that they had seen the preparation of Ext.P6 scene mahazar. The site plan prepared by Village Officer was examined as PW2 marked as Ext.P2.

14. As per Ext.P2, the distance from the road to the building, not seen noted. In Ext.P3 and Ext.P4 arrest memo and seizure mahazar, the witnesses are the Police officials who accompanied PW4 and there is no independent witness to prove the seizure or the arrest of the accused from the place of occurrence.

15. PW3 had deposed that, no independent witness were available at that time. At the same time, he admitted that, there is lodge nearby with residence therein. On the other hand, PW4 had deposed that he had not verified whether the employees of other state are residing in the lodge and he does not know whether the lodge is situating in the 3rd floor of the same building. He deposed that, there are several commercial establishments

functioning there in the place. In re-examination, he had stated that those establishments were not open at that time. on the other hand, the evidence of PW3 is to effect that, there are residence in the lodge. So from the evidence of PW3 and PW4, it can be seen that, they had not taken any earnest efforts to obtain signature of independent person in Ext.P3 and P4.

16. The number of the currency notes stated to be seized from the accused are marked as MO1 series are not noted in the property list or seizure mahazar. So there is no materials available to cross check whether the MO1 series are the currency notes taken into custody from the accused, by PW4 from the place of occurrence. Also, the person alleged to have purchased the liquor from the accused was not identified or examined. The details of the person who had received the bottle and in turn paid the amount to the accused, was not stated in the FIR and also PW4 had admitted that the details of identification of the said person who had purchased bottle from the accused was not stated to the Investigation Officer. So, when there is no material to cross check, whether MO1 series are the currencies seized from the accused and when the details of identification of the person who had purchased bottle from the accused is not available, then the allegation of the sale of bottles to any person could not be found to be undoubtedly

established, to attract the offence alleged. Mere possession of the article in excess quantity, is not sufficient, but it is to be proved that the possession of the article was intended for sale or actual sale of the same must be established.

17. As per the evidence of PW4, the accused himself have intimated the intention of sale of the articles, which is rather a confession to the Police, which is not admissible in evidence. When there is no sufficient evidence to prove the actual sale of the contraband articles, then there should be some evidence to prove that the intention of the accused was for sale of article. The evidence of PW4, Detecting Officer is to the effect that he had gathered the intention of the accused from the accused himself, which is nothing but confession of the accused to the Police officer. No other circumstances or grounds by which PW4 to be convinced regarding the intention of the accused to sell the articles is not stated in the evidence of PW4. So there is no sufficient evidence of available to see the prosecution to have establish the intention of the accused to sell the article seized or the actual sale of the article.

18. Burden is on the prosecution to prove that articles reached Court in a tamper proof condition and it reached Chemical Examiner's Lab also, in the

same condition in which it was produced in Court and the Chemical Analysis report relates to representative sample said to have been taken from the contraband article alleged to have been seized from the possession of the accused.(See **Santhosh v. State of Kerala 2021 (5) KHC 214**, **Viswanathan v. State of Kerala 2016 (3) KHC 38**). The Hon'ble High Court of Kerala in **Ravi v. State of Kerala (2011 (3) KLT 353)** has held that the prosecution has a duty to show that the sample allegedly drawn from the contraband articles said to have seized from the possession of the accused reached the hands of the Chemical Examiner in a fool proof condition.

19. In **Rajamma v. State of Kerala (2014 (1) KLT 506)** the Hon'ble High Court of Kerala observed that in the absence of any link evidence to show that the very same sample which drawn from the contraband article allegedly seized from the possession of the accused reached the hands of the Chemical Examiner, it is unsafe to convict the accused.

20. So, from the above referred to decision, it is clear that the prosecution has to prove the unbroken chain of custody of the contraband article when it reached at the chemical lab for analysis. Also, it is to be proved that the sample allegedly drawn from the contraband article said to have seized from the possession of the accused reached the hands of the

chemical examiner in a fool proof condition. When the evidence of persons who had taken the article to Court and who had taken the article to the lab is lacking, it is not possible to see the prosecution to have proved the unbroken chain of custody of article when it reached chemical examiner's lab or it was in a tamper proof condition. Unless and until, the above said conditions are not proved, then it is not possible to see the prosecution to have proved the offence alleged to be committed by the accused beyond reasonable doubt.

21. In view of the above discussions, we have already seen the unbroken chain of the article was not proved, actual sale or intention of the accused to sell the article is not undoubtedly established and also that the contraband article was tamper proof condition when it reached the chemical examiners lab is also sufficiently proved.

22. Taking into consideration of the above vital aspects, I am of the view that the evidence entered by the prosecution is not sufficient enough to fasten penal liability upon the accused. Hence, the point is found against the prosecution.

23. **Point No.2:** In view of the finding in point No.1, this point does not arise consideration. So, the accused is not found guilty for the offence committed under Section 55(i) of the Abkari Act and he is acquitted under Sec. 235(1) Cr.P.C for the above offence. Bail bond executed by the accused is hereby cancelled and he is set at liberty.

(Dictated to the Confidential Assistant, transcribed by him, corrected and pronounced by me in open Court this, on the 23rd day of March, 2026).

Sd/-
Asst. Sessions Judge

Prosecution Exhibits:-

P1	01.09.2019	Scene Mahazar
P2	28.09.2019	Site Plan
P3	---	Arrest Memo
P4	30.08.2019	Seizure Mahazar
P5	31.09.2019	Inspection Memo
P6	31.09.2019	Arrest Intimation
P7	01.09.2019	First Information Report
P8	01.09.2019	Property List
P9	28.09.2019	Forwarding note
P10	--	Inventory
P11	20.09.2019	Ownership Certificate
P12	28.09.2019	Possession Certificate
P13	21.10.2020	Chemical Analysis Report

Prosecution Witnesses:-

PW1	Sebastian.A.T
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PW2	Vinod Kumar.K.S
PW3	Hemanth Kumar
PW4	Mahesh.K.Nair
PW5	Baburaj
PW6	Unnikrishnan
PW7	Vijayakumar.M.P

Defence Exhibits & Witness :- NIL

Sd/-
Asst. Sessions Judge