

IN THE COURT OF THE ASST. SESSIONS JUDGE OF PAYYANNURPresent:- **Smt.Alshari.A**, Asst. Sessions JudgeThursday, the 26th day of March, 2026(5th Chaithra, 1947)**SESSIONS CASE No: 847 OF 2018**

Committed by Smt.Alshari.A, Judicial First Class Magistrate, Payyannur, in
C.P. No.109/2017 in Crime No.142/2016 of Payyannur Excise

Complainant	: The Excise Inspector, Excise Range, Payyannur. (Prosecution conducted by P.V.Madhu, Additional Public Prosecutor)
Accused	: Vattakkovval Sreedharan, Aged 58/2016, S/o.Kelan, Chunda, Perunthatta amsom desom
Defended by	: Adv. K.Vijayakumar
Charge	: U/s.55(g),1 of 1077 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(g) 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 Excise Inspector, Payyannur Excise Range
for the offence punishable under Section 55(g) of the Abkari Act.

2. **In to the vital facts:-** On 07.12.2016 at 12.15 p.m., at Chunda,
Perinthatta, the accused was found in possession of 35 litres wash in

contravention of the provisions of the Abkari Act, thereby the accused alleged to have committed the offence punishable under Section 55(g) 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.109/2017 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(g) 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 PW4 and Exts.P1 to P11 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 in possession of 35 litres wash, at Chunda, Pernithatta, on 07.12.2016 at 12.15 p.m, in contravention of the provisions of the Abkari Act thereby the accused alleged to have committed the offence punishable under Section 55(g) of the Abkari Act.

2) Sentence or order?

8. **Point No.1:-** As per the case of the prosecution, the accused was found to be in possession of 35 liters of wash, on 07.12.2016, in contravention of Kerala Abkari Act. To prove the same, the detection officer was examined as PW1.

According to him, while he was doing patrolling duty on 07.12.2016, he got information from unknown person that, the accused herein was in possession of wash for the purpose of distilling arrack. On inspecting the house of said Sreedharan, that is the accused herein, PW1 could see the person stirring in a jar and on inspecting the barrel, PW1 convinced that the said barrel contained wash. Sampling was done and he had affixed the label in the sample bottle and also in the barrel. Accused was arrested on preparing a arrest memo marked as Ext.P1 and Ext.P2 is the intimation memo. The article was seized after preparing seizure mahazar which is marked as Ext.P3. He had deposed that, the barrel in blue colour is shown to him which was taken in to custody from the place and the same was marked as MO1. Then, in cross examination, he had deposed that MO1 was not barrel, but a can. So as per the evidence of PW1, he had seized a barrel from the place of incident, where as MO1 produced before the Court is not a barrel but a can. That, itself creates doubt in the case of the prosecution. Moreover, from the evidence of PW1, it is clear that he had destroyed the wash from the place of incident, but no sanction was obtained from the higher authority prior to the destruction of the wash. PW1 had also deposed that no photographs were taken from the place of incident.

9. PW3 registered the case against the accused when PW1 had produced accused and articles seized, before the Excise Range Office. The Crime and Occurrence Report registered and which is marked as Ext.P5. He had prepared the

property list marked as Ext.P6. As per the evidence of PW3 also, the article seized was a plastic barrel. But the MO1 identified PW1 and PW3 is not a barrel, but a can.

10. PW2 had turned hostile to the prosecution, though he identified the signature in Ext.P3. According to PW2, he had affixed signature in Ext.P3, while he was doing tapping in his rubber plantation. The evidence of PW2 is not helpful to improve the case of the prosecution.

11. The Investigation Officer was examined as PW4. He had prepared the scene mahazar, which is marked as Ext.P8 and site plan submitted by the Village Officer marked as Ext.P9. Ext.P10 is the ownership certificate and chemical analysis report was marked as Ext.P11. PW4 had also submitted that in the mahazar, it is referred as barrel. From the evidence of PW1 or PW4, it is not possible to see any inventory to be made, or any photograph of the wash were taken prior to the destruction of the same. So, there is absolutely no evidence available to see the compliance of the procedure of Sec.53A and Sec.67 B of the Abkari Act. In **Appu V. State of Kerala 2016 (5) KHC 310**), it is observed that *“it was only the authorized officer who is competent to order for destruction of the seized articles in terms of provision of Sec.53A and Section 67B of the Act.”* Here in this case, admittedly, PW1 is not a competent officer under Sec.67B and 53A of the Abkari Act and he is a Preventive Officer. Accordingly he is an incompetent officer to destroy contraband. This aspect is also fatal to the prosecution.

12. Regarding seizure, drawing of sample, sealing, production before the Court and sending the same to chemical lab, the Act, insists certain procedures and formalities to be complied with. A successful prosecution is possible only on proof that such procedures and formalities are complied with. Now the question is what is the standard of compliance, required with regard to the statutory formalities stipulated under the Abkari Act?. Abkari Act is a legislation with penalties sufficiently deterrent. In ***State of Punjab v. Balbir Singh*** (1994 KHC 798 : (1994) 3 SCC 299 : (1994) SCC (Cri) 634 : AIR 1994 SC 1872 : 1994 (1) Crimes 753 : 1994 CriLJ 3702), the Apex Court held that “while dealing with the Acts prescribing stringent punishment, a balance must be struck in regard to the mode and manner in which the statutory requirements are to be complied with”. In ***Union of India v. Balmukund*** (2009 KHC 4414 : (2009) 12 SCC 161 : 2009 (2) KLT SN 28 : 2009 CriLJ 2407 : 2009 (4) SCALE 606), the Apex Court held that “where a Statute confers drastic powers and seeks to deprive a citizen of its liberty and making stringent provisions for grant of bail, scrupulous compliance with the statutory provisions must be insisted upon. The Apex Court, in ***Kishan Chand v. State of Haryana*** (2012 KHC 4755 : 2013 (1) KLT 634 : AIR 2013 SC 357 : 2013 CriLJ 723 : (2013) 2 SCC 502 : (2013) 2 SCC (Cri) 807 : in the context of the provisions of the NDPS Act held that “it is settled cannon of interpretation that penal provisions, particularly with harsher punishment ought to be construed strictly,

and the doctrine of substantial compliance cannot be pressed into service in such situation. It was further held that the principle of substantial compliance would be applicable in cases where the language of the provisions strictly or by necessary implications admits such compliance". In the context of Abkari Act, in ***Sathi v. State of Kerala (2007 (1) KHC 778 : ILR 2007 (1) Ker. 718 : 2007 (1) KLT SN 82 : 2007 (1) KLD 248)***, the Court emphasized on the requirement of strict compliance with the statutory formalities in the matter of sampling/sealing, etc. of the contraband to be sent for Chemical Examination. So, being Abkari Act is a draconian legislation imposing stringent punishment, it follows as a logical corollary and it is well settled that the standard of compliance required for the statutory formalities specified in the Act is *'scrupulous and strict'*, not substantial compliance.

13. In ***Sasidharan v. State of Kerala (2007 KHC 3404 : 2007 (1) KLT 720)***, it was observed that *"where sample changed several hands before reaching the Chemical Examiner, the prosecution had to necessarily examine the various officials who handled the sample to prove that while in their custody the seals on the sample have not been tampered with"*.

14. In ***Vijay Pandey v. State of U.P. (2019 KHC 6727 : AIR 2019 SC 3569)***, the Apex Court held that *"mere production of a laboratory report that the sample tested was contraband substance cannot be conclusive proof by itself. The sample seized and that tested have to be co – related."*

15. On evaluation and scrutinizing the evidence available before this court, there is absolutely no evidence adduced to prove the unbroken chain of custody of contraband articles and it was tamper proof, when it reached at the chemical examiner's lab, which is fatal to prosecution in view of the above discussion referred to. Also, the material objects produced before the court is not tallying with the article stated to be seized as per seizure mahazar. From the earlier discussions, we have seen that the statutory procedures are not complied with.

16. 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.

17. **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(g) 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 26th day of March, 2026).

Sd/-
Asst. Sessions Judge

Prosecution Exhibits:-

P1	07.12.2016	Arrest Memo
P2	07.12.2016	Arrest Intimation
P3	07.12.2016	Seizure Mahazar
P4	07.12.2016	Search list
P5	07.12.2016	Crime and Occurrence Report
P6	----	Forwarding note
P7	07.12.2016	Sample and Thondy list
P8	17.07.2017	Scene Mahazar
P9	27.04.2017	Sketch
P10	01.08.2017	Possession Certificate
P11	28.06.2018	Chemical Analysis Report

Prosecution Witnesses:-

PW1	Santhosh
PW2	Sunny Joseph
PW3	K.V.Vasudevan
PW4	Prabhakaran.V.V

Defence Exhibits & Witness :- NIL

Sd/-

Asst. Sessions Judge