

IN THE COURT OF SESSION MANJERI DIVISION

Present: Smt. Vincy.T.V
Assistant Sessions Judge, Tirur
Tuesday, the 31st day of March, 2026

SESSIONS CASE No.201/2019

(C.P.No.69/2018 of J F C M-I, Parappanangadi)

Name of the accused	Nikhilesh
Charge	Under sections 55(i) of the Abkari Act.
Plea of the accused	Not guilty
Finding of the Judge	Not guilty
Sentence or Order	Acquitted under section 235(1) of Cr.P.C
Cr.No. And Name of police station	Cr. No.381/2018 of Sub Inspector of Police, Tanur.
Prosecution conducted by	Adv. T.P. Abdul Jabbar, Addl. Public Prosecutor, Tirur.
Accused defended by	Adv. P.P.Muneer, Manjeri
This case was made over to this court by the Sessions Judge, Manjeri for disposal.	
1. Serial No.	69/2018
2. Cr.No. & Name of police station	Cr.No.381/2018 of Tanur Police Station

Description of the Accused

Name	Father's name	Caste/ Race	Occ upati on	Residence	Age
Nikhilesh	Gopalan	Hindu	--	Thirunilath (H), Theyyala.P.O., Tanur	

<u>Date of</u>		
1	Occurrence	30.09.2018
2	Complaint	30.09.2018
3	Apprehension	11.10.2018
4	Release on bail	11.10.2018
5	Commitment	11.02.2019
6	Commencement of trial	22.11.2025
7	Close of trial	27.03.2026
8	Sentence or Order	31.03.2026
Explanation for delay		: NA

J U D G M E N T

This case arose out from the final report filed against the accused by the Sub Inspector of Police, Tanur Police Station, in Crime No.381/2018 alleging offence punishable under section 55(a) and (i) of the Abkari Act.

2. The case of the prosecution curtly is that at 1.30 p.m., on 30.09.2018, at Kattilangadi near the High School of Kattilangadi, the accused was found in possession of excess quantity of Indian made Foreign Liquor for the purpose of sale, in an autorickshaw bearing Reg. No.KL-55-M-1450, in contravention of the provisions of the Abkari Act and thereby committed the offence punishable under Section 55 (a) and (i) of the Abkari Act.

3. As per the case of the prosecution, PW5, the then Sub Inspector of Police, Police Station, Tanur, detected the offence and laid the final report after investigation, before the Judicial First Class Magistrate Court-I, Parappanangadi.

4. On filing the final report, the learned Magistrate took the final report on file as CP.69/2018. On process, the accused appeared before that Court. After complying with the mandates of Section 207 of Cr.P.C, the learned Magistrate committed the case to the Hon'ble Court of Session, Manjeri. The

said Court took cognizance and made over the case to this Court for disposal.

5. On process, the accused appeared before this Court with the Counsel of his choice. He was allowed to continue on bail. The learned Additional Public Prosecutor opened his case by describing the charge brought against the accused and stating by what evidence he proposed to prove the guilt of the accused. Thereafter, this Court considered the records of the case and the documents submitted therewith and heard the accused and the prosecution. On being satisfied that there was sufficient ground to presume that the accused has committed the offence under section 55(i) of the Abkari Act, charge was framed under section 55(i) of the Abkari Act. It was read over and explained to the accused. He pleaded not guilty to the charge and claimed to be tried on such charge.

6. On the side of prosecution, PW1 to PW5 were examined and Exts.P1 to P9 were marked. MO1 to MO3 series were also marked. On concluding the evidence of prosecution, accused was examined u/s.313 Cr.P.C. He denied all the incriminating circumstances put to him.

7. Both sides were heard u/s.232 of Cr.P.C. On being satisfied that it was not a case where there was no evidence that the accused committed the offence, he was called upon to enter on his defence. He did not adduce any evidence on his side.

8. Heard both learned Additional Public Prosecutor and learned Counsel for the accused.

9. The points arise for consideration are:-

1. Has the prosecution proved that at 1.30 p.m., on 30.09.2018, at Kattilangadi near the High School of Kattilangadi, the accused was found in possession of excess quantity of Indian made Foreign Liquor for the purpose of sale, in an autorickshaw bearing Reg. No.KL-55-M-1450, in

contravention of the provisions of the Abkari Act?

2. If so, what is the offence committed by the accused?

3. What shall be the sentence or order to be passed?

10. **Point No.1:-** The case of the prosecution consists of the evidence rendered by PW1 to PW5 and Exts.P1 to P9 along with material objects MO1 to MO3 series. PW5 is the detecting officer who deposed as to getting a reliable information of selling of liquor in autorickshaw, at about 13.10 hours, on 03.09.2018, while he was on patrolling duty with other officers. According to him, he proceed to the spot and found an autorickshaw bearing Reg. No.KL-M-1450 near to Kattilangadi-Kuruvattisseri road in a ground with 2 persons standing nearby. According to PW5 one of the person who is in khaki colour shirt and pant found pouring liquor to the glass which is held by the person standing nearby. On seeing the patrolling party the person who standing near to the accused run away from the spot. Even if the accused also tried to run away from the spot he was stopped by the patrolling party and on further inspection he was found there 400 ml liquor in a 500 ml bottle with label 'Jordi Franc VSOP Brandy' along with ₹150/- Indian currency. On further inspection two covers full of bottles wee also found. Out of the bottles 6 were of 500 ml capacity, labelled 'Honey Bee Brandy' and 6 bottles of 'Jordi Franc VSOP Brandy' were found in the cover and consequently he was arrested after preparing Ext.P2 arrest memo. According to him, he took, S1, S2, S3 samples from those bottles and sealed it properly and the other bottles were labelled as P1 to P10, mineral water bottle as P11, glass as P12 and the cover which is kept for the custody of bottles as P13 and P14. The currency notes which is found in the possession of the accused were of ₹100/- and 5 nos. of ₹10/- rupees. He also seized vehicle autorickshaw KL-55-M-1450 after preparing seizure mahazar. According to him, he registered Ext.P5 FIR and prepared Ext.P6

Property list for producing the samples, the other contraband articles and the other articles Ext.P11 to P14 before the Court. PW5 claimed that he prepared Ext.P7 forwarding note and he prepared Ext.P3 scene mahazar. He produced P1 to P10 articles before the Excise Commissioner and according to him Ext.P8 is the 53 (A)(2) Certificate issued by the Executive Magistrate and Ext.P9 is the Chemical analysis report which is obtained in this crime. According to him, he prepared Ext.P1 seizure mahazar at the time when the articles were seized from the possession of the accused. He also identified MO1 to MO3 series.

11. PW2, is the accompanying officer who supported the case of the prosecution and the seizure of the articles in the possession of the accused by PW5. PW4, is the Village Officer who prepared Ext.P4 sketch on the basis of scene mahazar. PW1, is the witness to Ext.P3 scene mahazar.

12. The learned Additional Public Prosecutor fervidly argued that the prosecution could establish without any iota of doubt that the accused was found in possession of the Indian Made Foreign Liquor and sold the same in contravention of the provisions of the Abkari Act which warrants conviction under section 55(i) of the Abkari Act. In oppugnation, the learned Counsel for the accused strenuously argued that the prosecution palpably failed to bring home the alleged offence against the accused.

13. The Hon'ble High Court in **Udayan v State of Kerala**, reported in **2022 KHC 1058**, has held that there must be a necessity to have the chain as to custody of contraband commencing from the place of occurrence to the stage when it reaches laboratory so as to establish the case of prosecution. Hence, the entire evidence of the prosecution must be appreciated on the backdrop of the requirement of the chain from the custody of the contraband from the possession of the accused. Here, there is no specimen seal has been affixed by the detecting officer in Ext.P1 seizure mahazar. In **Vijayan @ Puthoor Vijayan v. State of Kerala** reported in **2021 (5) KHC 347** the Hon'ble High Court held

that “*The collection of sample from the alleged contraband by the Officer concerned shall be transparent eschewing possibility of tampering the sample in any manner.*” The Hon’ble High Court held that “*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. The sample so collected shall be produced before the jurisdictional Magistrate without any delay and the delay if any, shall be properly explained. It is also held in that decision that the Specimen seal affixed on the sample should be produced before the Court along with the contraband for comparison.*” It is pertinent to note that the property is seen produced before the Court after one month of the detection and there is an unexplained delay of one month. In **Sundaran G. v. State of Kerala**, reported in **2025 KHC 1580**, Hon’ble High Court held that even an unexplained delay of 2 days in producing the sample bottle and contraband items before Court casts serious doubt on credibilities of prosecution case. As the prosecution is duty-bound to explain how the seized articles were safely and properly kept in custody in the absence of such explanations, the prosecution case is unreliable. As there is an unexplained delay of 2 days in producing samples before the Court it is fatal to prosecution case.

14. The prosecution case can only be succeeded if the prosecution establishes that the very same sample drawn at the place of occurrence was the sample, which is forwarded to the laboratory as well as obtained the test report from the Chemical Examiner. In **Sasidharan v. State of Kerala** reported in **(2007 (1) KLT 720)**, our Hon’ble High Court had specified the legal obligation cast on the prosecution to prove that the sample allegedly seized from the accused eventually reached the hands of the Chemical Examiner in a tamper - proof condition. In **Vijay Pandey v. State of U.P.** reported in **(AIR**

2019 SC 3569) the Hon'ble Apex Court held that mere production of a laboratory report that the sample tested was the contraband substance cannot be conclusive proof by itself and that the sample seized and tested have to be co-related. In ***Bhaskaran v. State of Kerala and another*** reported in **(2020 KHC 5296) the Hon'ble High Court** held that the nature of the seal used by the detecting officer shall be mentioned in the seizure mahazar and the specimen of the seal shall be produced in the Court so as to enable the Court to satisfy the genuineness of the sample produced in the Court. In ***Rajamma v. State of Kerala*** reported in **(2014 (1) KLT 506) the Hon'ble High Court** held that if the specimen of the seal affixed on the bottle containing the sample is not produced before the court and forwarded to the Chemical Examiner for verification to ensure that the sample seal so provided is tallying with the seal affixed on the sample, no evidentiary value can be attached to the chemical analysis report.

15. It is the duty of the prosecution to prove the offence against the accused beyond any reasonable doubt and for proving the same the prosecution must establish that the sample reached the Chemical Examiners Lab in a tamper-proof condition and the report relates to the representative sample said to have been taken from the contraband article alleged to have been seized from the possession of the accused.

16. Here, nothing has been proved as to the fact that the sealing was done properly so as to ensure that the property which is sealed is the one which is produced before the lab. The method of sealing was not detailed by PW5. Whether it was taken in a cleansed bottle or not is also not seen stated by any of the witnesses. At this juncture the non production of the seal and non mentioning of the seal in any of the documents fatal to the case of the prosecution. Hence, the accused is entitled to get the benefit of doubt as the prosecution palpably failed to establish that the accused has found with the

contraband of which chemical report is marked here in as Ext.P9.

17. In the absence of satisfactory evidence, it cannot be said that the prosecution proved the guilt of the accused beyond reasonable doubt. In the given circumstances, the accused is entitled to get the benefit of doubt. So, this point is answered against the prosecution.

18. **Points No. 2 and 3:-** In view of the finding above, the accused is found not guilty of the offence under section 55(i) of the Abkari Act.

In the result,

1. The accused is acquitted under section 235(1) of Cr.P.C of the offence punishable under section 55(i) of the Abkari Act.
2. His bail bond stands cancelled and he is set at liberty.
3. MO1 to MO3 series shall be destroyed being valueless. The above order shall take effect only after the expiry of the period prescribed for appeal and if any appeal is filed, subject to the order in appeal by the Hon'ble Court.

(Dictated to the Confidential Assistant, transcribed by him, corrected and pronounced by me in open Court, on this the 31st day of March, 2026)

Sd/-
ASSISTANT SESSIONS JUDGE

Prosecution Witnesses examined:

PW1 – CW4 – Salam (22.11.2025)
 PW2 – CW2 – Biju (14.01.2026)
 PW3 – CW6 – Muhammed Shaheer (12.02.2026)
 PW4 – CW7 – Zacharias Mathew (06.03.2026)
 PW5 – CW8 – Naveen Shaj (12.03.2026)

Defence Witnesses: Nil.

Prosecution Exhibits:

P1 -- PW1 -- Seizure Mahazar
 P2 -- PW2 -- Arrest memo & Inspection memo

P3 -- PW3 -- Scene Mahazar
P4 -- PW4 -- Sketch
P5 -- PW5 -- FIR
P6 -- PW5 -- Property list
P7 -- PW5 -- Forwarding note
P8 -- PW1 – 53(A) (2) Certificate
P9 -- PW5 -- Chemical analysis report

Material Objects:

MO1 -- PW2 -- Bottle
MO2 -- PW2 -- Glass
MO3 series -- PW2 -- Plastic Bags (2 in number)

Sd/-
ASSISTANT SESSIONS JUDGE

Judgment in SC.201/2019
Dated: 31.03.2026