

IN THE COURT OF THE ASSISTANT SESSIONS JUDGE, OTTAPALAM

Present:- Sri. Renjith Rajan, Assistant Sessions Judge.

Thursday, the 4th day of June, 2026
(14th day of Jyaishtha, 1948 S.E)

SESSIONS CASE No 231/2020

Complainant	:	State of Kerala represented by Excise Inspector, Excise Range Office Thrithala
Name of the accused	:	Krishnankutty @ Babu, Aged 48/2018 years, S/o Thami, Kollanakuzhi House, Pooleri Desom, Pattithara Village, Pattambi Taluk, Palakkad District.
Charge	:	Under section 8 (1) and 8 (2) of Kerala Abkari Act I of 1077
Plea of the accused	:	Not guilty
Finding of the Judge	:	Not Guilty
Sentence or Order	:	Accused is found not guilty of the offence punishable under section 8 (2) of the Kerala Abkari Act and accused is acquitted U/s. 235 (1) of the Cr.P.C.
No. of Crime and name of Excise Range office	:	Crime No.13 of 2018, of Excise Range Office Thrithala.
Name and designation of the committing Magistrate and the No. of the case on her file.	:	Smt. Asha K. N., Judicial First Class Magistrate, Pattambi C.P. No 29/2019
Prosecution conducted by	:	Smt. P. M. Jaya, Addl. Public Prosecutor, Ottapalam.
Accused defended by	:	Advocate Sri. T. V. Pradeesh
Date on which copy of Judgment was given to the accused.	:	

J U D G M E N T

The cognizance for the offence was taken on the basis of the final report filed by the Excise Inspector, Thrithala Excise Range against the accused in Crime No.13/2018 of Excise Range, Thrithala for the offence punishable under Section 8(1) 8(2) of the Abkari Act.

2. The prosecution case is that, at 5.30 p.m. on 06.03.2018, in front of Pooleri drinking water motor shed, accused was found possessing 1.5 litres of arrack and conducting sale of the arrack without any license, permit or authority. Thereby, accused committed offences punishable under section 8(1) r/w 8(2) of the Kerala Abkari Act and the Rules thereunder.

3. CW1 the Excise Inspector, Excise Range, Thrithala registered the crime. CW5, the Excise Inspector, Excise Range, Thrithala conducted the investigation of the case and submitted the final report before the Judicial First Class Magistrate Court, Pattambi (hereinafter referred to as the committal court). Thereupon the case was numbered as C.P 29/2019. On appearance of the accused before the court of committal, procedure under section 207 of Cr.P.C was complied with and the case was committed to the Honourable Court of Session, Palakkad under section 209 of Cr.P.C. The Honourable Sessions Court made over the case to this Court for disposal.

4. The accused entered appearance before this Court and he was permitted to continue on the bail bond executed by him during the committal proceedings stage. The learned Additional Public Prosecutor opened the case by giving a brief description of the case and the evidence which she proposes to adduce in order to prove the guilt of the accused.

5. After hearing both sides, charge has been framed against the accused under Section 8(1) 8(2) of the Abkari Act, read over and explained the same to the accused, to which accused pleaded not guilty and claimed to be tried. Then the case was scheduled for trial.

6. In order to prove the prosecution case, PW1 to PW3 were examined and Exts.P1 to Ext.P11 were marked.

7. After closing the prosecution evidence, the accused was questioned under Section 313 (1) (b) of the Cr.P.C. with regard to the various incriminating circumstances appearing in the evidence against him. Accused denied all such incriminating circumstances and stated that she is totally innocent in this case.

8. Thereafter, both sides were heard under Section 232 Cr.P.C. This Court was of the opinion that sufficient grounds were not made out to acquit the accused at the said stage. Hence, the accused was called upon to enter on his defence and adduce evidence.

9. After hearing both sides and perusing the records available in this case, the following points arise for consideration :-

- 1 Whether the accused was found in possession of illicit arrack in violation of Abkari Act or Rules thereunder so as to be punished under Section 8(2) of the Abkari Act?
- 2 Is the accused liable to be convicted for the offence, if so, what should be the proper sentence to be imposed on the accused ?

10. **Point No.1** :- In this case, the accused was not arrested from the spot. So, identification of the accused for the first time before court is not believable. In the forwarding note, the name of the officer is

not mentioned. In the property list, the sample seal is not seen affixed. The specimen seal is not seen produced along with the charge sheet. The date of occurrence in this case is on 06.03.2018. The scene plan is seen prepared on 20.03.2019. The scene mahazar is seen prepared on 20.03.2019. So there is unexplained delay in preparing the scene plan and the scene mahazar. The statement of witnesses is seen recorded on 19.04.2019, 14.04.2019 and 26.03.2019. The charge sheet is seen filed before court only on 25.04.2019. So, in this case, there is unexplained delay in conducting investigation, interrogating witnesses, preparing scene plan and scene mahazar. In **Chandran Chandrashekharan v. State of Kerala 2016 (4) KLT 727**, our Hon'ble High Court held that *'the unexplained delay in completing the investigation and in filing the final report is fatal to the prosecution case.'*

11. In the correctness certificate, the date is not seen mentioned. The sample is seen forwarded to the lab only on 05.06.2018. Who was the custodian of the sample till it was produced before the lab is not discernible from records. The chemical examination report is seen filed only on 29.05.2019. So there is unexplained delay in filing the chemical examination report before court. In **2021 (4) KLJ 326 Thomas @ Joy v. State of Kerala**, our Honourable High Court held, *"Unexplained delay in the analysis of sample is fatal to prosecution."*

12. So based on the above said rulings and the discussions made above, prosecution failed to prove the guilt of the accused. Points found against prosecution.

13. **Point No.2** :- In view of the findings on Point No.1, accused is found not guilty of the commission of the offence punishable under Section 8(2) of the Abkari Act and he is entitled for an order of acquittal.

In the result,

- i The accused is acquitted under S. 235 (1) of the Code of Criminal Procedure.
- ii The bail bond executed by the accused stands cancelled and he is set at liberty.

Dictated to the Confidential Assistant, typewritten by him and taken print out, corrected and pronounced by me in open Court on this the 4th day of June, 2026.

Sd/-
ASSISTANT SESSIONS JUDGE

A P P E N D I X

The following witnesses were examined :

For the Prosecution:

PW1	:	Sri. Saju P., Excise Inspector, Excise Range Office Thrithala
PW2	:	Sri. Hamsa S/o Muhammad
PW3	:	Sri. Abhidasan P., Excise Inspector, Excise Range Office Thrithala

For the Defence : NIL

The following Exhibits were marked
For the Prosecution:

Ext.P1	06/03/18	Seizure Mahazar
Ext.P2	06/03/18	Crime and occurrence Report
Ext.P3	06/03/18	Thondi Sample List
Ext.P4	Date Nil	Forwarding Note
Ext.P5	06/03/18	Property List
Ext.P6	06/03/18	Inventory list
Ext.P7	Date Nil	Photograph
Ext.P8	20/03/19	Scene Mahazar
Ext.P9	20/03/19	Scene plan
Ext.P10	Date Nil	Correctness Certificate
Ext.P11	06/05/19	Chemical Analysis Report

For the Defence: Nil

Material Objects Marked : Nil

Sd/-

ASSISTANT SESSIONS JUDGE

Tabular Statement as per Rule 132 Criminal Rule of Practice of Kerala.

1.	Serial No.	:	
2.	Name of Excise Range Office and Crime No. of the offence	:	Crime No. 13/2018 of Excise Range Office Thrithala

3. Description of the accused:

Name and Residence	Father's Name	Occupation	Age
Krishnankutty @ Babu, Aged 48/2018 years, S/o Thami, Kollanakuzhi House, Pooleri Desom, Pattithara Village, Pattambi Taluk, Palakkad District.	S/o Thami	-----	48/2018

4. Date of :

Occurrence	:	06/03/18
Complaint	:	06/03/18
Apprehension	:	-----
Released on bail		28/09/19
Commitment	:	18/01/20
Commencement of trial	:	Charge framed on 18.01.2023 commenced on 24.03.2026
Close of trial	:	29/05/26
Sentence or Order	:	04/06/2026
Explanation for the delay	:	No delay

Sd/-

ASSISTANT SESSIONS JUDGE

JUDGMENT IN
SESSIONS CASE

No 231/2020

DATED : 04.06.2026.