

IN THE COURT OF SESSION, PATHANAMTHITTA DIVISION

Present: Sri.Rajeev.V, Assistant Sessions Judge, Thiruvalla

On Monday the 30th day of March 2026 / 9th day of Chaithra 1948 S.E

SESSIONS CASE No. 628/2023

**(C P. No.25/2023 on the file of the Judicial First Class Magistrate Court,
Adoor)**

Complainant	:	The State of Kerala Represented by the Excise Circle Inspector of Adoor Excise Circle Office in Crime and O.R No.66/2022.
By Advocate	:	Sri. Bijoy Kuruvilla, Additional Public Prosecutor, Thiruvalla.
Accused	:	Saraswathy, Aged 64/2022, W/o Sukumaran, Vadake Plavila Vadakkepura House, Peringanadu Muri, Peringanadu Village, Presently residing at, Sumi Bhavanam, Ammakanda Kara Muri, Peringanadu Village, Adoor Taluk.
By Advocate	:	Adv. Brijendralal.S.P.
Charge	:	u/Secs.8(2) and 55(g) of Abkari Act.
Plea of the accused	:	Not guilty.
Finding of the court	:	Not guilty.
Sentenced or order of the court	:	Acquitted U/s.235 Cr.P.C.
Date of commencement of Trial	:	19.03.2026.
Close of Trial	:	26.03.2026.

This Sessions case having been finally heard on 26.03.2026 and the court on 30.03.2026 delivered the following:-

JUDGMENT

This is a case taken on file pursuant to the final report filed by the Excise Circle Inspector, Adoor alleging that the accused has committed the offences punishable under Sections 8 (1) , 8 (2) and 55(g) of the Abkari Act.

2. The prosecution case, in brief, is as follows:- The accused was found possessing one litre of arrack, implements for manufacturing arrack and 40 litres of wash, at the shed at the western side of the house bearing No.XII/325 of Pallikal Gramapanchayath in Ammakandakara Muri in Peringanadu Village, on 01.04.2022 at 12.45 p.m. Thus the accused is alleged to have committed the aforesaid offence.

3. On filing final report before Judicial First Class Magistrate Court, Adoor, the case was taken into file as C.P. No.25/2023. On appearance of the accused before the committal court, copies of prosecution records were furnished to her under Section 207 of the Code of Criminal Procedure. Thereafter the case was committed to the Hon'ble Sessions Court, Pathanamthitta under Section 209 of the Code of Criminal Procedure. The Hon'ble Court made over the case to this court for disposal.

4. Accused is on bail. The learned Additional Public Prosecutor opened his case under Section 226 of the Code of Criminal Procedure by describing the

charge brought against accused and stated by what evidence he proposes to prove the guilt of the accused on charge. Upon consideration of the records of the case and the documents submitted there with, and after hearing the submissions of the accused and the prosecution in this behalf, the court considered that there is no ground to discharge the accused under Section 227 of the Code of Criminal Procedure. After such consideration and hearing as aforesaid, the court is of the opinion that there is ground for presuming that accused has committed the alleged offences. Hence charge under Sections 8(2) and 55(g) of the Abkari Act was framed and the same was read over and explained to the accused to which she pleaded not guilty.

5. From the side of the prosecution PW1 to PW3 were examined. Exhibits P1 to P6 were marked. MO1 to MO6 were identified.

6. On completion of evidence from the side of the prosecution the accused was examined under Section 313 of the Code of Criminal Procedure. She denied all incriminating circumstances brought out in evidence against her and pleaded innocence.

7. Heard the counsel for the accused and the prosecution for the purpose of Section 232 of the Code of Criminal Procedure. But there was no ground to acquit the accused under Section 232 of the Code of Criminal Procedure.

Thereafter the counsel for the accused has submitted that there is no defence evidence.

8. The following points arise for consideration in this case:-

- 1 *Whether the accused kept materials for manufacturing arrack as alleged by the prosecution?*
- 2 *Whether the accused was in possession of arrack as alleged by the prosecution?*
- 3 *Whether the accused is guilty of an offence punishable under Sec. 55(g) of the Abkari Act?*
- 4 *Whether the accused is guilty of an offence punishable under Sec. 8(2) of the Abkari Act?*
- 5 *If the accused is found guilty, what shall be the order as to sentence?*

9. Heard both sides.

10. Counsel for the accused has argued that there is no spot arrest. He further points out that the contrabands were allegedly seized from an open space. He further points out that the ownership of the house from where the contrabands were seized was not proved. He further points out that no inventory was prepared before destroying the wash. He has also contended that the specimen seal of the Detecting Officer was not separately produced before court. According to him, the forwarding note does not contain the name of the messenger who had taken the

sample to the laboratory. He further points out that though the samples were taken to the laboratory on 05.04.2022, it was seen received at the laboratory on 26.04.2022. He further points out that there is delay in filing the final report.

11. **Point Nos.1 and 2:-** All the above points can be considered together for convenience and to avoid repetition of discussion.

12. PW1 is an independent witness. He deposed that the signature contained in Exhibit P1 mahazar is that of himself. But he further deposed that he had not witnessed the incident alleged by the prosecution. He was declared hostile to the prosecution. PW3 is the Detecting Officer. According to him, on 01.04.2022 he was working as Excise Inspector of Excise Range Office, Adoor. He deposed that on that day, while he was conducting patrolling and reached near Malamelkara Canal Bridge at 12 noon, he had received reliable information, that the accused had been distilling and selling arrack at her house. According to PW3, he proceeded to the house of the accused after preparing and sending search memo to the court. PW3 further deposed that the house was found locked and that two white cans containing some liquid and a plastic bottle having capacity of one litre containing some liquid and implements for manufacture of arrack were found at the shed used as a kitchen. PW3 further deposed that on detailed examination it was found that the cans were having capacity of 20 litres and one of them having cylindrical shape. PW3 further deposed that on examining the liquid, by smelling

and tasting, he was satisfied that the liquid contained in the cans was wash and that contained in the plastic bottles was arrack. He further deposed that an aluminium pot having 20 litre capacity, an aluminium bucket having 10 litres capacity and an "illichatti" having capacity of 5 litres were the implements for manufacturing of arrack. PW3 further deposed that he had registered a case against the accused, who was the resident of said House. PW3 further deposed that he had drawn 500 ml of wash and 200 ml of arrack as samples, the sample bottles were sealed with his personal seal having impression "BNB" and the sample bottles were affixed with label containing the brief facts of the case and the signatures of himself and the witnesses and that they were marked as S1 and S2. He added that the bottle containing the remaining arrack was also sealed and labelled. He further deposed that the cans, after emptying them, were also taken into custody. The search list prepared by PW3 is marked as Exhibit P3 and the mahazar prepared by him is marked as Exhibit P1. According to PW3, he had appeared before Range Office, Adoor with the case records, property and has registered Exhibit P4 crime and occurrence report. The property list prepared by PW3 is marked as Exhibit P5 and the forwarding note prepared by him is marked as Exhibit P6. PW3 further deposed that he could identify the material objects recovered. He has identified MO1 to MO6 and he deposed that they contained the labels consisting of the signatures of himself and witnesses and the brief facts of

the case. He added that he had a given statement before the Investigating Officer. PW2 is the Investigating Officer. According to him, he was the Excise Circle Inspector, Adoor from 07/2021 to 05/2023. According to him, he took charge of investigation of the case on 04.04.2022, verified the records, visited the place of occurrence and recorded the statement of witnesses. The Chemical analysis report is marked as Exhibit P2. PW2 further deposed that, on satisfying that the accused has committed the offences, he has filed the final report.

13. The case of the prosecution is that wash, arrack and implements for manufacture of arrack were found from a shed used as a kitchen attached to the house wherein the accused was residing. PW3 is the detecting officer and PW2 is the investigating officer. They have no case regarding the presence of the accused at or near the place of occurrence. PW3 has deposed that the contrabands were recovered from a shed which was not enclosed. There is nothing to indicate that the house or shed are in the exclusive possession of the accused. In a decision reported as 2020(4) KLT 118 [Rafeeqe v. Sub Inspector of Police, Kunnamkulam Police Station and Another] the Hon'ble High Court has held that identity of an offender cannot be proved merely on the basis that the name of the accused is mentioned in the documents prepared by the Detecting Officer as the person who committed the offensive act. In the instant case, the only independent witness examined-PW1-has categorically deposed that he had not witnessed the alleged

detection of contrabands. Therefore, I am of the view that prosecution has not succeeded to establish that it was the accused who had committed the offence as alleged.

14. The chemical analysis report in the case is marked as Ext P2. Ext P2 states that the samples contained ethyl alcohol. In order to rely on Ext P2, prosecution has to first establish the identity of the samples drawn and the samples sent for analysis and also that the samples taken had reached the chemical examination laboratory in a tamper proof manner. Now let me consider the evidence in this regard.

15. There is no case for the prosecution that the specimen impression of the seal of the detecting officer was produced before the court. PW3 has deposed that specimen impression of his seal was not separately produced before the investigating officer. The importance of the specimen seal was discussed by the Hon'ble High Court in Bhaskaran K. v. State of Kerala and Another [2020 KHC 5296]. It was held in that decision that when the specimen of the seal affixed on the sample bottle 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 bottle, no evidentiary value can be given to the chemical analysis report and it cannot be found that the very same sample which was drawn from the contraband article allegedly seized from the possession of the

accused reached the hands of the chemical examiner without any tampering. Further PW3 has conceded that his seal was not affixed in the property list. In a decision reported as 2024(1)KHC 444 (Viswambharan Vs State of Kerala) it was held that it is well settled that the specimen of the seal is required to be affixed in the property list so as to enable the court to satisfy the genuineness of the sample produced in the court. PW3 has also deposed that the forwarding note does not contain the name of the official who had taken the sample to the laboratory. In the decision Kumaran P V State of Kerala and another reported in 2016 (5) KHC 632, it is held that when the space meant for writing the name of the Excise Guard / Preventive Officer with whom the sample was sent, remained vacant in copy of the forwarding note, it was imperative for the prosecution to examine the thondy clerk of the Court or the Excise guard concerned to prove the tamper - proof despatch of the sample to the laboratory. In another decision reported in 2023 (7) KHC 173 (Shijo Das V State of Kerala) it was held that the non mentioning of the excise guard in the forwarding note, non-examination of the Thondy Clerk who dispatched the sample or the excise guard who took the sample to the lab etc..are serious laches which are fatal to the prosecution case. No attempt was made by the prosecution to examine the official who had taken the sample to lab or the thondy clerk concerned to establish the tamper proof dispatch of the samples. It is also significant to note that PW2 has deposed that the sample sent from the court on

5/4/22 had reached the laboratory on 26/4/22 only. Prosecution has not offered any explanation for the said delay. Thus considering the evidence in the case in the light of the legal position stated above, I am satisfied that there are circumstances to doubt the identity of sample drawn and sample sent for analysis.

16. It has also come out in the evidence of PW3-the detecting officer -that the procedure stipulated in s.53A Abkari Act was not followed in the destruction of wash allegedly recovered from the possession of the accused.

17. This is a case involving reverse onus clause as incorporated under section 64 of the Act and in such cases, the prosecution shall be put to a stricter test and if at any stage, the accused is able to create a reasonable doubt, as part of his defence, to rebut the presumption of guilt, the benefit will naturally go to him as laid down in the decision Anil Kumar V State of Kerala and another reported in 2020 (4) KHC 172. Thus on an over all consideration of the facts and circumstances discussed above, I am satisfied that the prosecution has not succeeded to establish beyond reasonable doubt that the accused was either possessing arrack or wash or implements for manufacture of arrack, as alleged by the prosecution. The points are found against prosecution.

18. **Point No.3 and 4:-** In view of my finding on point Nos.1and 2, accused is not found guilty of the offences punishable under Sections 8(2) and 55(g) of the Abkari Act.

19. **Point No.5:-** In view of my findings on point Nos.3 and 4, this point does not arise for consideration.

In the result, the accused is acquitted under Section 235 of the Code of Criminal Procedure. She is set at liberty. The bail bond executed by her stands cancelled. MO1 to MO6 shall be disposed as per Abkari rules after the period of appeal or if any appeal is preferred on disposal of the same.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected by me and pronounced in open Court on this the 30th day of March, 2026.)

Sd/-
RAJEEV.V
ASSISTANT SESSIONS JUDGE.

APPENDIX

Exhibits Marked for the Prosecution:-

P1	-	Mahazer dated 01.04.2022 prepared by PW3, Biju.N.Baby, Excise Inspector of Adoor Excise Range Office and proved through PW1, Ramachandra Kurup S/o Raghava Panicker.
P2	-	Chemical Analysis Report dated 15.10.2022 prepared by Assistant Chemical Examiner to the Government of Kerala and proved by PW2, K.P Mohan, Excise Circle Inspector of Adoor Excise Circle Office.
P3	-	Search list dated 01.04.2022 prepared and proved by PW3, Biju.N.Baby, Excise Inspector of Adoor Excise Range Office
P4	-	Crime and Occurrence report dated 01.04.2022 registered and proved by PW3, Biju.N.Baby, Excise Inspector of Adoor Excise Range Office
P5	-	Property List dated 01.04.2022 prepared and proved by P PW3, Biju.N.Baby, Excise Inspector of Adoor Excise Range Office
P6	-	Forwarding note dated 01.04.2022 prepared and proved by PW3, Biju.N.Baby, Excise Inspector of Adoor Excise Range Office

Exhibits marked for the defence :- NIL.

Witnesses Examined for the Prosecution:-

PW1	-	19.03.2026	-	Ramachandra Kurup S/o Raghava Panicker.
PW2	-	19.03.2026	-	K.P Mohan, Excise Circle Inspector of Adoor Excise Circle Office.
PW3	-	23.03.2026		Biju.N.Baby, Excise Inspector of Adoor Excise Range Office.

Witness examined for the defence :- Nil

Material Objects marked for the Prosecution :-

MO1	-	20 litre white can.
MO2	-	20 litre white cotainer.
MO3	-	Plastic Bottle.
MO4	-	20 litre Aluminium pot.
MO5	-	10 litre aluminium bucket.
MO6	-	5 litre illichatti.

Material objects marked for the defence :- Nil

**Id/-
ASSISTANT SESSIONS JUDGE**

TABULAR FORM

1	Serial No.	: SC No.628/2023.
2	Name of Police Station / Excise Range & Crime No.	: Adoor Excise Range and Crime & O.R No.66/2022.
3	Name of the Accused	: Saraswathy.
4	Husband Name	: Sukumaran.
5	Caste	: -
6	Occupation	: -
7	Residence	: Vadakke Plavila Vadakkepura House, Peringanadu Muri, Peringanadu Village, Presently residing at, Sumi Bhavanam, Ammakanda Kara Muri, Peringanadu Village, Adoor Taluk.
8	Age	: 64/2022.
9	Date of Occurrence	: 01.04.2022.
10	Date of complaint	: 01.04.2022.
11	Date of Apprehension	: -
12	Date of Release	: -
13	Date of committal	: 30.06.2023.
14	Date of commencement of trial	: 19.03.2026.
15	Close of trial	: 26.03.2026.
16	Sentence or order	: 30.03.2026.
17	Explanation for delay	: No delay.

Id/-
ASSISTANT SESSIONS JUDGE

JUDGMENT IN
SC No.628/2023
Dated :30.03.2026