

IN THE COURT OF SESSION, PATHANAMTHITTA DIVISION

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

On Wednesday the 25th day of March 2026 / 4th day of Chaithra 1948 S.E

SESSIONS CASE No. 690/2023

**(C P. No.91/2020 on the file of the Judicial First Class Magistrate Court,
Thiruvalla)**

Complainant	:	The State of Kerala Represented by the Excise Circle Inspector of Mallappally Excise Circle Office in Crime and O.R No.36/2020.
By Advocate	:	Sri. Bijoy Kuruvilla, Additional Public Prosecutor, Thiruvalla.
Accused	:	Sam P Thomas @ Moncy, Aged 46/2020, S/o E.T Samuvel, Eettikizhakkethil Veedu, Vellayil Desham, Perumpetty Village, Mallappally Taluk.
By Advocate	:	Adv. R. Ravi Prasad.
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	:	12.03.2026.
Close of Trial	:	23.03.2026.

This Sessions case having been finally heard on 23.03.2026 and the court on 25.03.2026 delivered the following:-

JUDGMENT

This is a case pursuant to the final report filed by the Excise Circle Inspector

of Mallapally alleging that the accused has committed the offences punishable under Sections 8 (1) and (2) and 55(g) of the Abkari Act.

2. The prosecution case, in brief, is as follows:- The accused was found distilling arrack and possessing wash and other utensils for preparation of arrack in the kitchen of his house by name EettyKizhakkathil bearing No. X/245 in Kottanadu Grama Panchayathu near Chuzhana junction at Perumpetty Village at 10.30 a.m. on 09.04.2020. Thus the accused is alleged to have committed the aforesaid offences.

3. On filing final report before Judicial First Class Magistrate Court, Thiruvalla, the case was taken into file as C.P. No.36/2020. On appearance of the accused before the committal court, copies of prosecution records were furnished to him 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 he pleaded not guilty.

5. From the side of the prosecution PW1 to PW4 were examined. Exhibits P1 to P12 were marked.

6. On completion of evidence from the side of the prosecution the accused was examined under Section 313 of the Code of Criminal Procedure. He denied all incriminating circumstances brought out in evidence against him 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 wash and 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. The counsel for the accused has argued that there is delay of 21 days in producing the property before court. He further points out that the accused was not arrested and that there are no identifying features of the accused in the mahazar. He further points out that the specimen seal of the Detecting Officer was not produced before court. He further points out that the material objects are not available before the court. He further points out that the name of the messenger was not recorded in the forwarding note. He further points out that Section 53A of Abkari Act was not complied with. His further case is that the Village Officer and the Panchayath Secretary were not examined to prove the documents allegedly prepared by them.

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 the Detecting Officer. According to him, on 09.04.2020 he was the Excise Range Inspector Malapally. PW1 deposed that on that day while he was conducting patrolling and reached Chuzhani Junction, he had received reliable information that the accused had been distilling arrack at his house. He further deposed that he proceeded to the said house after preparing and sending search memo to the court. According to PW1, when he reached in front of the house it was seen that the door was kept open. According to PW1, he had seen a person who was lean and having about 6 feet height, pouring some liquid to a steel vessel at the top of a hearth arranged there. According to him, the said person ran away on seeing the excise party. He added that though the accused was followed, he could not be traced out. He further deposed that the hearth and the arrangements were examined and it was found that the vessels were connected using maida. He also deposed that he had found that the steel vessel at the top was having 10 litres capacity and was having 7 litres of water. According to PW1, there was a "idly kuttakam" having a hole at its middle portion connected with a plastic pipe and the end of the pipe was inserted to a glass bottle. PW1 further deposed that the bottle was having 200 ml of some liquid and on examining the said liquid, by tasting and smelling, he was satisfied that it was arrack. He further deposed that there was an "illichatti" inside the "idly Kuttakam" and that there was a big

aluminium pot having 30 litre capacity and containing 20 litres of some liquid below the “illichatty”. According to PW1, he was satisfied that it was wash. He added that the witnesses were also satisfied of the said fact. PW1 further deposed that he had also found a white can at the kitchen having 2 litre capacity and containing 1.8 litres of some liquid. He added that he was satisfied that the said liquid was arrack. PW1 further deposed that he had also found a tank of “syntax” brand having capacity of 250 litre and containing about 200 litres of some liquid. He further deposed that he was satisfied that the said liquid was arrack. PW1 further deposed that he was satisfied that it was the accused who was storing and selling wash and arrack at his house. He further deposed that he had poured the arrack in the bottle having 650 ml to the white can and drawn a sample of 200 ml in a 650 ml bottle. He added that 500 ml of wash from the syntax tank was drawn in 650 ml bottle. He added that both the bottles were affixed with his personal seal “K R”. According to PW1, the mahazar prepared by him is Exhibit P1 and the search memo prepared by him is Exhibit P2. According to him, he had registered Exhibit P3 Crime and Occurrence Report after reaching the Range Office with the case records and property and prepared Exhibit P4 property list. According to PW1, Exhibit P5 is the forwarding note prepared by him and Exhibit P6 is the search list. He further deposed that he could identify the material objects. He further deposed that he had recorded the physical identification marks of the

person who ran away, in the mahazar. He added that the accused who ran away is there in the dock. He further deposed that he had given statement before the Investigating Officer. PW2 and PW3 are two independent witnesses. However they deposed that they have not put their signature for Exhibit P1 mahazar and that they have not witnessed the incident alleged by the prosecution. PW4 is the Investigating Officer. According to him, he was the Excise Circle Inspector, Mallappally on 11.05.2020. PW4 deposed that he had taken charge of the case on that day and that he had prepared Exhibit P7 scene mahazar after visiting the place of occurrence. According to PW4, Exhibit P8 is the ownership certificate obtained from Kottanand Grama Panchayath. He further deposed that he had made an application to the Perumpetty Village Office for obtaining the possession certificate and sketch and plan. The possession certificate obtained is marked as Exhibit P9 and the location sketch so obtained is marked as Exhibit P10. The chemical analysis report is marked as Exhibit P11. According to PW4, Exhibit P12 is the report filed by the Excise Range Inspector, Mallappally stating that the material objects in the case were destroyed in the flood on 16.10.2021. He further deposed that there was an inconsistency regarding the capacity of the “Idly Kuttakam” and that he was satisfied that the capacity of the same is 5 litres and that the same was specified in the final report. He further deposed that he had recorded the statement of witnesses and filed the final report on completion of

investigation.

13. The accused was not arrested from the spot. PW1 is the Detecting Officer. The identification features of the accused were not stated in the statement of PW1 to the investigating officer. It is true that the mahazar states that the person ran away was a lean person having about 6 feet height. In this context, it is to be noted that the independent witnesses - PW2 and PW3-have deposed that they had neither witnessed the incident alleged by the prosecution nor affixed their signature in the mahazar. Though prosecution alleges that the accused was found distilling arrack and possessing wash and implements for distilling arrack, at his house, it cannot be said from Ext P8 ownership certificate that the accused was residing in the house from where the contrabands were allegedly recovered. In a decision reported as 2020(4) KLT 118 [Rafeeqe v. Sub Inspector of Police, Kunnankulam 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. Therefore, I am of the view that prosecution has not succeeded to establish in the present case,beyond reasonable doubt, that it was the accused who had committed the offence as alleged.

14. The chemical analysis report in the case is marked as Ext P11. Ext P11 states that the samples contained ethyl alcohol. In order to rely on Ext P11,

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 go through the evidence in this regard.

15. Prosecution has no case that the specimen of the seal of the detecting officer was produced before the court. PW1 has deposed that the specimen impression of his seal was not separately produced before the investigating officer. PW4 has also deposed that he had not produced the specimen of the seal of the detecting officer before court. 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, PW1 has 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 was

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) also 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 in the present case 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. Again, PW1 has also deposed that the property list does not contain his seal. 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. Thus considering the evidence in the case in the light of the legal positions stated above, I am satisfied that there are circumstances to doubt the identity of sample drawn and sample sent for analysis.

16. It is also significant to note that the material objects are not produced before this court. Though PW1 claims that there was sanction at the time of the

alleged occurrence to destroy the wash, there is no documents to establish such a claim. Thus there is no positive evidence to show that there is compliance of s.53 A of Abkari Act.

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 point is 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. He is set at liberty. The bail bond executed by him stands

cancelled.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected by me and pronounced in open Court on this the 25th day of March, 2026.)

Sd/-
RAJEEV.V
ASSISTANT SESSIONS JUDGE.

APPENDIX

Exhibits Marked for the Prosecution:-

P1	- Mahazar dated 09.04.2020 prepared and proved by PW1, Dileep Kumar.D, Excise Range Inspector of Mallapally Excise Range Office.
P2	- Search memo dated 09.04.2020 prepared and proved by PW1, Dileep Kumar.D, Excise Range Inspector of Mallapally Excise Range Office
P3	- Crime and Occurrence report dated 09.04.2020 registered and proved by PW1, Dileep Kumar.D, Excise Range Inspector of Mallapally Excise Range Office.
P4	- Property List dated 09.04.2020 prepared and proved by PW1, Dileep Kumar.D, Excise Range Inspector of Mallapally Excise Range Office.
P5	- Forwarding note prepared and proved by PW1, Dileep Kumar.D, Excise Range Inspector of Mallapally Excise Range Office.
P6	- Search list dated 09.04.2020 prepared and proved by PW1, Dileep Kumar.D, Excise Range Inspector of Mallapally Excise Range Office.
P7	- Scene mahazar dated 22.07.2020 PW4, V.Robert, Excise Circle Inspector of Mallapally Excise Circle Office.
P8	- Ownership certificate dated 26.05.2020 prepared and issued by Sathesh Babu.S, Secretary, Kottanadu Gramapanchayat and proved PW4, V.Robert, Excise Circle Inspector of Mallapally Excise Circle Office.
P9	- Possession certificate dated 08.07.2020 issued by Village Officer, Mallapally dated 02.11.2021 PW4, V.Robert, Excise Circle Inspector of Mallapally Excise Circle Office.
P10	- Scene plan (Location sketch) prepared and issued by P.Sivakumar, Village Officer, Perumpetty and proved by PW4, V.Robert, Excise Circle

	Inspector of Mallapally Excise Circle Office.
P11	Chemical Analysis Report dated 06.09.2021 prepared by Assistant Chemical Examiner to the Government of Kerala and proved by PW4, V.Robert, Excise Circle Inspector of Mallapally Excise Circle Office.
P12	Report of loss of material objects dated 09.03.2026 prepared and proved by PW4, V.Robert, Excise Circle Inspector of Mallapally Excise Circle Office.

Exhibits marked for the defence :- NIL.

Witnesses Examined for the Prosecution:-

PW1	-	12.03.2026	-	Dileep Kumar.D, Excise Range Inspector of Mallapally Excise Range Office.
PW2	-	12.03.2026	-	Achankunju S/o Kunjuttu.
PW3	-	12.03.2026	-	Prashanth S/o K.S Jose.
PW4	-	17.03.2026	-	V.Robert, Excise Circle Inspector of Mallapally Excise Circle Office.

Witness examined for the defence :- Nil

Material Objects marked for the Prosecution :- Nil.

Material objects marked for the defence :- Nil

**Id/-
ASSISTANT SESSIONS JUDGE**

TABULAR FORM

1	Serial No.	: SC No.690/2023.
2	Name of Police Station / Excise Range & Crime No.	: Mallapally Excise Range and Crime & O.R No.36/2020.
3	Name of the Accused	: Sam P Thomas @ Moncy.
4	Father's Name	: E.T Samuvel.
5	Caste	: -
6	Occupation	: -
7	Residence	: Eettikizhakkethil Veedu, Vellayil Desham, Perumpetty Village, Mallappally Taluk.
8	Age	: 46/2020.
9	Date of Occurrence	: 09.04.2020.
10	Date of complaint	: 09.04.2020.
11	Date of Apprehension	: -
12	Date of Release	: -
13	Date of committal	: 14.06.2023.
14	Date of commencement of trial	: 12.03.2026.
15	Close of trial	: 23.03.2026.
16	Sentence or order	: 25.03.2026.
17	Explanation for delay	: No delay.

Id/-
ASSISTANT SESSIONS JUDGE

JUDGMENT IN
SC No.690/2023
Dated :25.03.2026