

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE,  
IRINJALAKUDA**

**Present:- Sri. Vinod Kumar N, Additional Sessions Judge  
Tuesday, 31<sup>st</sup> March, 2026/ 10<sup>th</sup> Chaithra, 1948**

**Sessions Case No.281/2025**

(C.P. No. 119/2023 of Judicial First Class Magistrate, Chalakudy)  
(Crime.No. 272/2016 of Mala Police Station)

**COMPLAINANT:-**

State of Kerala, Represented by the Sub Inspector of Police,  
Mala Police Station.

By Addl. Public Prosecutor

**ACCUSED:-**

Ramachandran, aged 48 years, S/o. Velu, Elenjipra House,  
Valiyaparambu Desom, Kuruvilassery Village.

By Adv. P.R.Joshy (Legal Aid)

Offence	U/s. 55(a)(i) of Abkari Act
Plea of Accused	Not guilty
Finding	Not guilty
Sentence of Order	Accused is acquitted under section 258 of BNSS and he is set at liberty forthwith. The accused is on bail. The accused stands discharged of the bail bond furnished by him.

**DESCRIPTION OF ACCUSED**

<u>Sl.No.</u>	<u>Name</u>	<u>Fathers Name</u>	<u>Residence</u>	<u>Age</u>
1.	Ramachandran	Velu	Elenjipra House, Valiyaparambu Desom, Kuruvilassery Village.	48/2016

This case having been finally heard on 27/03/2026 in the presence of counsel appearing for both sides and having stood over for consideration this day, the court delivered the following:-

## **J U D G M E N T**

The accused in this case is charge sheeted by the Sub Inspector of Police, Mala police station in Crime No.272/2016 for the offences punishable under sections 55(a) and 55(i) of The Abkari Act (1 of 1077).

2. The prosecution case is that on 20/02/2016 at about 17.15 hours, near the public road proceeding from Kottamury centre to Valiyaparambu at Kottamury, the accused was found in possession of Indian Made Foreign Liquor and found selling Indian Made Foreign Liquor in contravention of the provisions of Abkari Act and thereby committed an offence punishable under section 55(a) and 55(i) of the Abkari Act (1 of 1077) and within the cognizance of this Court.

3. The case was registered as crime No.272/2016 and after the completion of the investigation, the final report under section 173 of Cr.P.C was laid before the Judicial First Class Magistrate, Chalakudy. On receipt of the final report, the learned Magistrate had taken the file as CP 119/2023. The accused was in judicial custody. On production of the accused before the Court, the copies of the relevant records were furnished to him. Since, the offence is exclusively triable by Court of Sessions, the learned Magistrate committed the case to the Court of Sessions, Thrissur in compliance of Section 209 of Cr.P.C as per order dated 17/03/2025. On the basis of the committal order and on receipt of the records, the Sessions Court, Thrissur took cognizance of the offence as SC 281/2025 and thereafter made over the case to this court for trial and disposal according to law. The accused was defended by a legal aid counsel.

4. The learned Additional Public Prosecutor then opened the prosecution case by describing the charges brought against the accused and by what evidence he proposed to prove the guilt of the accused. Thereafter, bail was granted to the accused and he was released on

bail. After hearing the submissions of the learned Additional Public Prosecutor and the counsel for the accused and upon consideration of the records of the case, it was found that no sufficient grounds for a discharge was existed and hence the charge was framed against the accused for the offences punishable under sections 55(a) and 55(i) of The Abkari Act (1 of 1077) and the same was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

5. In order to prove the charge, on the side of the prosecution, five witnesses were examined as PW1 to PW5 and eleven documents were marked as Exts.P1 to P11 and MO 1 series. After the prosecution evidence was closed, the accused was questioned under section 351 of BNSS and all the incriminating materials brought out in the prosecution evidence were put to the accused and the accused denied all the incriminating materials against him. After questioning the accused, the case was posted for hearing under section 255 of BNSS. The Additional Public Prosecutor and the counsel for the accused were heard and as it is not a case where there is no evidence against the accused for entitling the accused an acquittal under section 255 of BNSS, the accused was called upon to enter his defence and to adduce evidence if any in support thereof and the case was adjourned for recording the defence evidence. No defence evidence was adduced.

6. After conclusion of the evidence of this case, the learned Additional Public Prosecutor and the counsel for the accused advanced their arguments and after hearing the arguments and points of law and on perusal of evidence and other matters before the court the points that arise for consideration are as follows.

1. Whether on 20/02/2016 at about 17.15 hours, near the public road proceeding from Kottamury centre to Valiyaparambu at Kottamury, the accused was found in possession of Indian Made Foreign Liquor in contravention of the provisions of Abkari Act and thereby committed an offence punishable under section 55(a) of the Abkari Act and within the

cognizance of this Court ?

2. Whether on the same date, time and in the course of the same transaction, the accused was found selling Indian Made Foreign Liquor in contravention of the Abkari Act and thereby committed an offence punishable under section 55(i) of The Abkari Act ?
3. Whether the prosecution has succeeded in proving that the accused has committed the offence as alleged by the prosecution beyond reasonable doubt?
4. What should be the proper sentence to be awarded in case the accused is found guilty ?

7. **Point Nos. 1 to 3 :-** The case of the prosecution is that on 20/02/2016 at about 17.15 hours, near the public road proceeding from Kottamury centre to Valiyaparambu at Kottamury, the accused was found in possession of Indian Made Foreign Liquor and found selling Indian Made Foreign Liquor in contravention of the provisions of Abkari Act and thereby committed an offence punishable under section 55(a) and 55(i) of the Abkari Act.

8. To prove the charge, on the side of the prosecution, five witnesses were examined as PW1 to PW5 and Exts.P1 to P11 and MO 1 series were marked. PW4 is the detecting officer and PW1 is the accompanying officer. PW2 is the Village officer who prepared Ext.P2 sketch plan, PW3 is the mahazar witness and PW5 is the investigating officer, who filed final report.

9. According to the Additional Public Prosecutor, the prosecution could successfully establish that the accused was found in possession of Indian Made Foreign Liquor and was found selling Indian Made Foreign Liquor in contravention of the provisions of Abkari Act and thereby committed the offence punishable under section 55(a) and 55(i) of the Abkari Act. On the other hand, the learned counsel for the accused contended that the prosecution has miserably failed to prove the charge

against the accused beyond reasonable doubt. According to the counsel for the accused, the prosecution failed to prove that the contraband material alleged to have been found in the possession of accused, was in connection with export, import, transport or transit and that the accused was found selling Indian Made Foreign Liquor. According to the defence counsel, the alleged seizure was not made in accordance with the law and the samples were not properly forwarded to the laboratory.

10. For considering the contentions of the Additional Public Prosecutor and the counsel for the accused in detail, it is just and necessary to bring on record the evidence of the prosecution witnesses led by the prosecution before this Court.

11. PW1 is the CPO, Mala police station and he deposed that, while he was working as CPO at Mala Police Station on 20/02/2016, he was in the patrol party of Sub Inspector, Anoopmon who restrained the accused and seized liquor, glass, water and ₹100/-. After seizure, Exhibit P1 seizure mahazar was prepared and he put his signature in the mahazar as a witness.

12. PW2 is the Village Officer, Kuruvilassery and he deposed that on 30/09/2023, he inspected the scene of occurrence and prepared Exhibit P2 sketch plan.

13. PW3 deposed that he did not see the seizure of liquor from the accused. But he admitted that he had put his signature in Exhibit P1 document and Exhibit P3 scene mahazar. According to him, he put his signature in these documents at his house.

14. PW4 is the Sub Inspector, Mala police station and he deposed that on 20/02/2016 at 05.15 p.m, he reached Kottamuri centre on getting information that Elinjipra Ramachandran was selling liquor from there and then he could see the accused pouring some liquid in a glass and handing over the same to the person standing opposite to him and receiving currency note from him. When the police reached near the accused, the person who received the liquid in the glass, abandoned the

glass and ran away from the place. He then restrained the accused and searched the plastic carry bag found in possession of the accused and he could find two bottles, each having 1 litre capacity with label 'Rock bottom XXX Rum'. He took some liquid from these bottles and tasted and smelt it and then he was convinced that it was liquor. He could also find another 750 ml bottle containing the label 'V. John XXX Rum' and he took some liquid from this bottle and tasted and smelt the liquid and he was convinced that it was also liquor. He also examined the liquid found in the bottle containing label 'Rock bottom XXX Rum' from which the accused poured liquid to other person and on examination of the liquid, he was convinced that it was liquor. On body search of the accused, he found ₹100/- in the pocket of the accused. He arrested the accused and prepared Exhibit P4 arrest memo. He conducted body search of the accused and prepared Exhibit P5 inspection memo. The arrest of the accused was intimated to the relative of the accused and he prepared Exhibit P6 arrest notice. He collected 150 ml of liquor each in three 375 ml bottles as sample from each bottle and marked them as S1 to S12 and packed and sealed the same and affixed label containing the name and description on each bottle and then he seized the contraband materials and samples and prepared Exhibit P1 seizure mahazar. He then reached the police station and prepared Exhibit P7 First Information Statement. On the basis of Exhibit P7, he registered Exhibit P7(a) FIR. On 21/02/2016, he took up the investigation and reached the place of occurrence and prepared Exhibit P3 scene mahazar. He filed Exhibit P8 correction report to correct the description of place of occurrence. He prepared property list and produced the same before the court. He identified MO1 series sample bottles.

15. PW5 is the Sub Inspector, Mala Police Station and he deposed that on 27/09/2023, he took up the investigation. According to him, Exhibit P9 is the property list prepared by CW1 (PW4). But he deposed that the properties mentioned in Ext.P9 were produced before the court by him and he identified 8 sample bottles referred to in Ext.P9

property list as MO1 series. He had prepared Exhibit P10 forwarding note to get the sample analyzed and he deposed that Exhibit P11 is the certificate of chemical analysis. He filed final report before the court on 07/10/2023.

16. To prove the complicity of the accused, the prosecution mainly relied on the evidence of PW1 to PW5. PW3 is an independent witness. Though PW3 admitted his signature in Ext P1 seizure mahazar and Ext.P3 scene mahazar, he deposed that he did not see the seizure of liquor from the accused. He further deposed that, he put his signature in Ext.P1 seizure mahazar and Ext.P3 scene mahazar at his house. So there is no independent corroboration in this case to prove the seizure of liquor from the possession of the accused. It is a settled position of the law that merely because independent witness to the seizure did not support the case of the prosecution, it is not a ground to disbelieve the case of the prosecution provided the evidence of official witnesses is free from doubt and any infirmity. Now the question is whether the evidence of official witnesses is sufficient to prove the charge against the accused.

17. According to PW4, he seized the bottles containing liquor from the accused and prepared In Ext.P1 seizure mahazar. But in Ext.P1 seizure mahazar, the type of seal used to seal the samples was not mentioned and the specimen of the seal was not imprinted in Ext.P1 seizure mahazar. PW4 during cross examination admitted that he did not affix his personal seal on Ext.P1 seizure mahazar.

18. Further according to PW4, he prepared Ext.P9 property list and forwarded the same to the court. But the evidence of PW5 would show that though PW4 prepared Ext.P9 property list, the properties referred to in the property list were produced by him before the court. The evidence of PW5 would further show that he took up the investigation only on 27/09/2023. The date of detection in this case was 20/02/2016. But Ext.P9 would show that the properties received in the court only on 03/10/2023. So, there is an inordinate delay of more than seven and half years in producing the sample bottles before the court. There is no

explanation by the prosecution for this inordinate delay. Further, no personal seal of the detecting officer is seen affixed in Ext.P9 property list.

19. Further the final report was seen filed before the Court only on 10/10/2023 ie, after 7 ½ years of the date of detection. The prosecution miserably failed to explain the reason for the delay in concluding the investigation within a reasonable time.

20. In this matter, according to the prosecution, four bottles were seized from the possession of the accused. In the final report, it is stated that the properties were produced before the Deputy Excise Commissioner, Thrissur to prepare the inventory. But the prosecution has neither produced the inventory nor the contraband articles alleged to have been seized from the possession of the accused. There is no evidence before the court that the properties were produced before the Deputy Excise Commissioner, Thrissur and inventory was prepared with regard to the contraband articles. The contraband articles were not produced before the committal court for verification. So it is evident that there is contravention of section 53 and 53 A of the Abkari Act. The officer who detects the offence under the provisions of the Abkari Act is under the bounden duty to the mandatory provisions of the Act. Non compliance of the provisions under section 53 and 53 A of Abkari Act is fatal to the prosecution.

21. In ***Vijayan @ Puthoor Vijayan v. State of Kerala*** reported in ***(2021 (5) KHC 347) the Hon'ble High Court of Kerala*** enumerated the steps to be followed by the officer collecting the sample, steps to be followed by Thondy Clerk, who is authorized to receive the thondy and the measures to be ensured by the Chemical Examiner. *In the said decision it is held in paragraph 13(ii) 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, 13(iii) the samples so collected shall be produced before the jurisdictional Magistrate without any delay and the delay if any shall be*

*properly explained, 13(iv) the specimen seal affixed on the sample should be produced before the court along with the contraband for comparison.*

22. *In **Viswambharan vs. State of Kerala (2024 (1) KHC 444)**, the Hon'ble High Court of Kerala held that, It is well settled that the specimen of the seal used is required to be affixed in the contemporaneous mahazar, property list and in the forwarding note, so as to enable the court to satisfy the genuineness of the sample produced in the court. Further, the detecting officer has also a duty to depose regarding the nature of the seal affixed on the bottle containing the sample and the can containing the remaining liquor and in this case, PW4 has not deposed anything regarding the nature of the seal used by him.*

23. In this case, PW4 himself admitted that he did not affix his personal seal on Ext.P1 seizure mahazar. No seal was seen affixed in Ext.P9 property list also. Ext.P9 property list would show that sample bottles were reached after 7 ½ years. Further, the prosecution has no case that specimen seal was produced before the court along with the contraband for comparison. So under the circumstances, it cannot be said that the samples were produced in the Court in the same condition in which it was seized and the chemical analysis report relates to the representative sample said to have been taken from the contraband article seized.

24. When all these facts are considered together, shadow of doubt casts on the prosecution case. Considering the entire facts before the court the benefit of doubt must be given to the accused. Since the prosecution failed to prove the charge against the accused under section 55(a) and 55(i) of the Abkari Act (1 of 1077), beyond reasonable doubt, the accused is entitled to get an acquittal. Thus, the point Nos. 1 to 3 are found against the prosecution.

25. **Point No. 4 :-** In the light of my finding regarding point Nos. 1 to 3, the accused is found not guilty of the offences alleged by the prosecution under sections 55(a) and 55(i) of The Abkari Act (1 of 1077).

In the result, the accused is acquitted under section 258 of BNSS and he is set at liberty forthwith. The accused is on bail. The accused stands discharged of the bail bond furnished by him. MO1 series shall be destroyed after the appeal period.

*(Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in open court on this the 31<sup>st</sup> day of March, 2026)*

Sd/-

**Vinod Kumar N.  
Additional Sessions Judge.**

**APPENDIX**

**WITNESS EXAMINED FOR PROSECUTION:-**

Rank	Date	Names	Whether eye witness/Police Witness/ Expert Witness/ Other Witness
PW1	02/02/2026	Umesh CPO 6243	Police Witness
PW2	02/02/2026	Noushad.M.H. Village Officer, Alathur- Kuruvilassery Group Village Office	Other Witness
PW3	02/02/2026	Thilakan	Other Witness
PW4	17/02/2026	Anoopmon.P.D. SI of Police, Mala	Police Witness
PW5	16/03/2026	Neil Hector Fernandez SI of Police, Mala	Police Witness

**WITNESS EXAMINED FOR THE DEFENCE:-** Nil



Commencement of trial	:	13/10/2025
Commencement of evidence	:	02/02/2026
Close of trial	:	26/03/2026
Sentence or order	:	31/03/2026

Period of Detention undergone during Investigation/Enquiry/Trial:

Judicial custody from 20/02/2016 to 09/11/2016 and from 02/11/2024 to 26/06/2025

Id/-  
**Vinod Kumar N.**  
**Additional Sessions Judge.**

**/True copy /**

**By order**

**Sheristadar**