

IN THE COURT OF SESSION, THRISSUR DIVISION

**Present:- Smt. Lekshmi K. Thampi,
Additional Assistant Sessions Judge, Irinjalakuda.**

Friday the 10th day of April, 2026/20th day of Chaithram, 1948 SE

Sessions Case No. 1349/2022

(C.P. 68/2022 of the Judicial First Class Magistrate Court, Kodungallur)

- Complainant : State of Kerala – Represented by Sub Inspector,
Kaipamangalam Police Station (Crime No.322/2022)
By Addl. Public Prosecutor Sri. Jogy George.
- Accused : Bhojakumar, S/o Ramankutty, Pallath Veedu, Near
Amakuzhipalam, Koorikuzhi Desom.
By Adv. T.G.Shaju.
- Offence : U/Ss. 55 (i) of Abkari Act.
- Plea of accused : Not guilty.
- Finding of the Court : Not guilty.
- Sentence or Order : The accused is found not guilty of the offence
punishable u/s 55 (i) of the Abkari Act, and the
accused is acquitted of the said offence u/s 235(1)
CrPC, and he is set at liberty. His bail bond stands
cancelled.

This Sessions case having been come up for final hearing before me on 31.03.2026 in the presence of the Additional Public Prosecutor and counsel for the accused and the court on 10.04.2026 delivered the following:-

JUDGMENT

This case arose from a crime and occurrence report in Crime No.322/2022 registered by the Sub Inspector, Kaipamangalam Police Station.

2. The prosecution case is that on 01.05.2022 at 14.45 hours near Koorikuzhy Amakuzhy bridge, accused was found in possession of 1750 litres

of IMFL in an autorickshaw bearing number KL-08-BB 8071 and selling the same in contravention to the provisions of Kerala Abkari Act. The offence was detected by the Sub Inspector of the Kaipamangalam police station and a case was registered against the accused alleging offence under Section 55 (i) of the Abkari Act.

3. The case was originally taken on file as CP.68/2022 before the Judicial First Class Magistrate Court, Kodungallur, alleging offences under Section 55 (i) of the Abkari Act. The accused entered on appearance before the Judicial First Class Magistrate Court, Kodungallur and was granted bail. The copies of relevant prosecution records were served to the accused. As the offences charged against the accused are exclusively triable by the Court of Sessions, the case was committed to the Hon'ble Sessions Court, Thrissur. Thereafter, the case was made over to this court for trial and disposal.

4. Summons issued to the accused. The accused entered an appearance before the court and as he was on bail he was permitted to continue on bail. The learned Additional public prosecutor opened the case u/s 226 CrPC. Thereafter accused was heard u/s 227 Cr. P.C. and he did not argue for discharge, as there is sufficient ground to proceed against the accused, charge was then framed for the offences u/s 55 (i) of the Abkari Act. He pleaded not guilty and claimed to be tried.

5. To bring home the guilt of the accused persons, PW1 to PW6 were examined. Exts.P1 to P14 and MO1 to MO3 were marked. RC particulars is mistakenly marked as Ext.P14 instead of Ext.P13. Hence it is corrected. After closing the prosecution evidence, the accused was examined under section 313(1)(b) Cr.P.C. He denied all the incriminating evidence brought out against him in the prosecution evidence. As there was no ground to acquit the accused u/s 232 CrPC, an opportunity was given to the accused to adduce their evidence. No evidence was adduced from the side of the accused.

6. Heard both sides.

7. The following points arise for consideration:

1. *Whether the accused on 01.05.2022 at 14.45 hours near Koorikuzhy Amakuzhy bridge, accused was found in possession of 1750 litres of IMFL in an autorickshaw bearing number KL-08-BB 8071 and selling the same in contravention to the provisions of Kerala Abkari Act and thereby committed offence punishable u/s 55(i) of Kerala Abkari Act?*

2. *If so, Sentence to be passed?*

8. Point No.1:- The prosecution case is that on 01.05.2022 at 14.45 hours near Koorikuzhy Amakuzhy bridge, accused was found in possession of 1750 litres of IMFL in an autorickshaw bearing number KL-08-BB 8071 and selling the same in contravention to the provisions of Kerala Abkari Act. The offence was detected by the Sub Inspector of the Kaipamangalam police station and a case was registered against the accused alleging offence under Section 55 (i) of the Abkari Act.

9. Evidence of prosecution:- To prove the charges, the prosecution examined six witnesses: PW1 to PW6.

10. PW1 is the Assistant Sub Inspector of Kaipamangalm police station. He deposed that on 01.05.2022 he went to patrol duty along with Sub Inspector and civil police officer Muhammed Rafi. And while they were conducting patrol duty they got information that one person is conducting illegal sale of foreign liquor near Amakuzhy bridge hence they reached the spot at 2.45 pm. And when they reached the spot they saw an autorickshaw bearing No.KL 8 BB 8071 parked at the road and one person sitting inside the autorickshaw handing over one glass containing some liquid to another person

to the other person standing near the autorickshaw. On seeing the police party the person who was standing near the autorickshaw ran away and CPO Rafi followed him. At that time he questioned the other person sitting in the auto and he found that the other person sitting in auto was carrying one bottle in his hand containing some liquid and when he questioned him he replied that he has bought the liquor from beverages for conducting sale. Hence he took the bottle and inspected the same. And thereafter he inspected the vehicle and he found a white colour disposable kit kept on the back side of the auto. He opened the kit and found three bottles of IMFL. He took samples from the bottles and he also seized Rs.420/- which is found in the possession of the accused which is alleged to be the sale money. He further stated that the Sub Inspector arrested the accused and prepared the mahazar. He signed the mahazar and arrest memo as witness. He identified his signature and it is marked as Exts.P1 and P2.

11. PW2 is an independent witness and an auto driver. He identified his signature in scene mahazar. It is marked as Ext.P3. He stated that when he went to his house for taking food he saw police near the bridge and asked him whether he has knowledge about the case of the sale of liquor and he stated that he has only hearsay information. Police informed him that they reached for conducting investigation regarding the case and asked him to sign on a paper.

12. PW3 is also an independent witness. She stated that vehicle bearing No.KL 8 BB 8071 belongs to her and she is the RC owner and stated that the auto is used by her husband. But she stated that she has no knowledge regarding the case. She admitted that she received the auto on kycheet from the court. Kycheet is marked as Ext.P4. Photographs of auto is marked as Ext.P5 series.

13. PW4 is the village officer who prepared scene plan. He identified his signature and is marked as Ext.P6.

14. PW5 is Sub Inspector of Kaipamangalam police station. He also deposed in tune with PW1. He identified the arrest memo and mahazar. He stated that he prepared arrest memo and inspection memo and took samples from the seized articles. Inspection memo is marked as Ext.P7 and samples are marked as S1 to S4. He affixed label in the seized articles and samples. According to him he seized 7 bottles, one vehicle, one glass, one empty bottle and Rs.420/- from the possession of the accused. He identified his signature in the mahazar. He stated that the mahazar contains his seal "SHO KPM". He further stated that he went to police station along with the seized articles and registered case against the accused. He identified the FIR and it is marked as Ext.P8. He produced the seized articles before the court after preparing property list. Property list is marked as Ext.P9. He further stated that CW9 conducted further investigation. But he is no more. CW9 prepared the mahazar which is marked as Ext.P3. He further stated that the investigating officer produced the articles before Deputy Commissioner and Deputy Commissioner prepared inventory. Inventory is marked as Ext.P11. Forwarding note is marked as Ext.P10. Chemical report is marked as Ext.P12. He identified MO1 before the court.

15. PW6 is Joint RTO of SRT0, Kodungallur. He produced the RC particulars of vehicle bearing No.KL 8 BB 8071. According to him Sini is the RC owner. RC particulars is marked as Ext.P14.

16. The learned Additional Public Prosecutor argued that the accused was arrested from the spot with contraband articles and therefore there is sufficient evidence to prove the allegations against the accused. Hence, it was contended that the accused is liable to be convicted.

17. On the other hand, the learned counsel for the accused argued that the allegation against the accused is one of sale of liquor, but there is no evidence to prove that the accused was engaged in sale. Even if the evidence

of the witnesses is accepted in toto, at best it would show consumption of liquor in a public place. It is further contended that the quantity allegedly seized is within the permissible limit. It was also argued that the incident allegedly occurred in a public place during daytime, but no independent witnesses were cited in the seizure mahazar or arrest memo. The counsel also pointed out contradictions in the evidence of PW1 and PW5 and therefore argued that the prosecution has failed to prove the case beyond reasonable doubt.

18. The prosecution relies mainly on the evidence of PW1 and PW5. PW1 is the police officer who assisted PW5 in the detection, while PW5 is the detecting as well as investigating officer. According to PW1 and PW5, when they reached the spot, they saw an autorickshaw bearing No. KL-8-BB-8071 parked on the road and one person sitting inside the autorickshaw handing over a glass containing some liquid to another person standing near the autorickshaw. On seeing the police party, the person standing near the autorickshaw ran away and CPO Rafi followed him. At that time, PW5 questioned the person sitting inside the autorickshaw and found that he was holding a bottle containing some liquid. On questioning, the accused allegedly stated that he had purchased the liquor from the Beverages outlet for sale. Thereafter, PW5 inspected the vehicle and found a white coloured disposable kit kept on the back side of the autorickshaw. On opening the kit, three bottles of IMFL were found. Samples were taken from the bottles and Rs.420/- found in the possession of the accused was also seized as alleged sale proceeds.

19. However, certain material contradictions and omissions are evident in the prosecution case. PW1 stated that some people had gathered at the spot, whereas PW5 stated that there were no persons present. PW2, cited as an independent witness, turned hostile and stated that he had not witnessed

the incident and had only hearsay knowledge. The incident allegedly occurred in a public place during daytime, but no independent witness was cited either in the arrest memo or in the seizure mahazar. All witnesses cited are police officials. No explanation has been offered by PW1 or PW5 for not securing independent witnesses. This omission creates doubt regarding the seizure and arrest of the accused at the relevant time and place.

20. Further, PW1 and PW5 stated that the person who allegedly purchased the liquor ran away and that CPO Muhammed Rafi followed him but could not apprehend him. No investigation was conducted to identify that person. No identifying features of the said person were recorded. This omission further weakens the prosecution case.

21. More importantly, the evidence of PW1 and PW5 as well as Ext.P2 seizure mahazar only shows that the accused handed over some liquid to another person and on seeing the police, the other person ran away. There is no evidence to show that the said person handed over any currency to the accused. To attract the offence of sale, the prosecution must prove that there was a completed transaction involving consideration. In the absence of any evidence to show payment of money or any other consideration, the alleged handing over of liquor alone cannot constitute "sale".

22. Therefore, the evidence on record is insufficient to establish that the accused was engaged in sale of liquor. The contradictions in the prosecution evidence, absence of independent witnesses, failure to identify the alleged purchaser, and lack of proof of consideration create reasonable doubt. The prosecution has failed to prove the allegation against the accused beyond reasonable doubt.

23. Further, the property list does not contain the specimen seal and the specimen seal was not separately produced before the court. According to

PW1 and PW5, samples were taken from the spot. However, there was no independent witness to the sampling process. The mandatory requirements under Section 53A were also not complied with, as the sample was not taken in the presence of the Magistrate.

24. The inventory produced by the prosecution shows that the articles were produced before the Deputy Commissioner only on 29.06.2022, whereas the offence was detected on 01.05.2022. Thus, there is considerable delay in producing the articles and in preparing the inventory. No explanation has been offered by the prosecution for this delay. Such unexplained delay creates doubt regarding the safe custody and integrity of the seized articles.

25. Moreover, the correctness of the inventory has not been certified by the Magistrate. In the absence of certification by the Magistrate, the inventory cannot be treated as reliable evidence regarding the nature and quantity of the seized articles. The failure to produce the specimen seal, non-compliance with statutory requirements, unexplained delay in forwarding the seized articles, and absence of certification of the inventory by the Magistrate cumulatively affect the credibility of the prosecution case. Therefore, these lapses also create reasonable doubt regarding the prosecution version and further weaken the case against the accused.

26. On an overall appreciation of the evidence, this Court finds that the prosecution has failed to establish the allegation against the accused beyond reasonable doubt. The evidence adduced by PW1 and PW5 does not prove a completed transaction of sale. The alleged purchaser was not identified or examined and there is no evidence to show payment of consideration. The absence of independent witnesses, contradictions in the testimony of official witnesses, and failure to investigate the person who allegedly ran away create serious doubts regarding the prosecution version.

27. Further, the non-production of the specimen seal, non-compliance with statutory requirements relating to sampling, absence of independent witnesses at the time of seizure, unexplained delay in producing the seized articles and preparing the inventory, and failure to obtain certification of the inventory by the Magistrate also affect the credibility of the prosecution case. These lapses raise reasonable doubt regarding the seizure, custody, and identity of the contraband allegedly recovered from the accused.

27. In the above circumstances, the prosecution has failed to prove the case beyond reasonable doubt. The accused is therefore entitled to the benefit of doubt. Hence, the accused is found not guilty of the offence alleged and is entitled to be acquitted.

28. Point No.2: In light of the above discussion, I hold that the prosecution has failed to prove the allegation against the accused beyond reasonable doubt. Accordingly, the accused is found not guilty of the offence punishable under Section 55 (i) of the Kerala Abkari Act. As such, the accused is acquitted under Section 235(1) of the Cr.P.C., and is set at liberty forthwith. The bail bond, if any, shall stand cancelled. MOs shall be destroyed as per rules after appeal period being valueless,.

(Dictated to the confidential assistant, typed by her, corrected by me and pronounced in open court on this the 10th day of April, 2026.)

Sd/-

Lekshmi K. Thampi
Additional Assistant Sessions Judge,
Irinjalakuda.

APPENDIX

A. Prosecution witnesses:-

Prosecution witness No.	Name	Description
1	Mohammed Rafi	Assistant Sub Inspector, Kaipamangalam
2	Prabhakaran	Attestor to Ext.P3.
3	Sini	Attestor to P4, P5 series

4	Praveenkumar	Village Officer, Kaipamangalam.
5	Krishnaprasad	Sub Inspector, Kaipamangalam.
6	Sunilkumar.	Joint RTO, SRT0, Kodungallur.

A. Prosecution Exhibits:-

Exhibit No	Description of the exhibit	Proved by/ Attested by
1	Arrest memo	PW1
2	Seizure mahazar	PW1
3	Scene mahazar	PW2
4	Kycheet	PW3
5 series	Photographs	PW3
6	Sketch	PW6
7	Inspection memo	PW5
8	FIR	PW5
9	Property list	PW5
10	Forwarding note	PW5
11	Inventory	PW5
12	Chemical analysis report	PW5
13	RC particulars	PW6

B. Defence Witness:- Nil**B. Defence Exhibits:-** Nil**Material Objects :-**

MO1	-	Plastic bottle
MO2	-	Glass
MO3	-	Bag

FOOT NOTE

Crime No & Name of Police Station	: Crime No.322/2022 of Kaipamangalam Police Station.
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DESCRIPTION OF THE ACCUSED

Sl. No.	Name of accused	Father's name	Occupation	Residence	Age
1.	Bhojakumar	Ramankutty		Pallath Veedu, Near Amakuzhipalam, Koorikuzhi Desom.	

DATE OF

Occurrence	: 01.05.2022
Complaint	: 01.05.2022
Commitment	: 07.10.2022
Arrest	: 01.05.2022
Released on bail	: 17.05.2022
Commencement of trial	: 04.02.2025
Closure of trial	: 17.03.2026
Judgment pronounced	: 10.04.2026
Sentence/Order	: 10.04.2026.
Copy given to accused	: Nil
Explanation for delay.	: No delay.

Sd/-
Additional Assistant Sessions Judge,
Irinjalakuda.

// True Copy //

By Order,

Sheristadar.