

IN THE COURT OF SESSIONS, KALPETTA DIVISION

**Present :- Sri.Biju.T, Additional Sessions Judge,
Additional Sessions Court, Mananthavady.**

Monday the 08th day of June, 2026
(The 18th day of Jyaishta, 1948)

SESSIONS CASE No. 395/2024

Complainant	:	State represented by the Excise Inspector, Excise Range Office, Mananthavady through Additional Public Prosecutor, Mananthavady.
Name of the Accused	:	Binu Baby, Aged 33/2021, S/o Mathew, Kumarappallil House, Koodalkadavu Bhagam, Payyampally P.O., Payyampally Village, Mananthavady Taluk.
Charges	:	U/s 58 of Kerala Abkari Act.
Plea of the Accused	:	Not guilty.
Finding of the Judge	:	Not guilty.
Sentence/ Order	:	The accused is acquitted U/s.235(1) of the Cr.P.C for the offence punishable U/s.58 of the Abkari Act, Act 1 of 1077. The bail bond stands cancelled. The sureties are discharged. The accused is set at liberty.
No. of Crime and Name of Police Station	:	Crime No.91/2021 of Excise Range Office, Mananthavady Police Station.
Prosecution conducted by	:	Sri. M.G.Sraddhadarn, Additional Public Prosecutor, Mananthavady.
Accused defended by	:	Adv.Ajith Lal, Mananthavady.

<u>DESCRIPTION OF THE ACCUSED</u>		
1.	Serial Number	: SC 395/2024
2.	Name of Police Station and Crime Number of the offence	: Crime No.91/2021 of Excise Range Office, Mananthavady.
3.	Name of Accused	: Binu Baby
4	Father's Name	: Mathew
5.	Occupation	: Coolie
6.	Residence	: Kumarappallil House, Koodalkadavu Bhagam, Payyampally P.O., Payyampally Village, Mananthavady Taluk.
7.	Age	: 33/21
8.	Date of Occurrence	: 03.05.2021
9.	Date of Complaint	: 02.03.2022
10.	Date of Apprehension	: 04.05.2021
11.	Date of Release on Bail	: 14.05.2021
12.	Date of Commitment	: 03.09.2024
13.	Date of Commencement of Trial	: 18.04.2026
13A	Commencement of evidence	: 18.04.2026
14.	Date of Close of Trial	: 30.05.2026
15.	Date of Sentence/ Order	: 08.06.2026
16.	Service of copy of Judgment/ Order to the Accused.	: -
17.	Explanation for the delay	: -
18	Period of detention undergone during investigation, inquiry or trial for the purpose of Section 428 Cr.P.C.	: From 04.05.2021 to 14.05.2021

ADDITIONAL SESSIONS JUDGE

This case coming on for hearing before me upon perusing the records of evidence and proceedings and upon duly considering the same after hearing the public prosecutor and counsel for the accused on 08.06.2026 I do adjudge and pass the following:-

J U D G M E N T

This is a case in which a final report was filed U/s 173(2) of the Code of Criminal Procedure by the Excise Inspector of Excise Range Office, Mananthavady in Crime No.91/2021, alleging the commission of the offence punishable U/s.58 of the Kerala Abkari Act (hereinafter called “the Act”).

2. The prosecution case, in brief, is as follows:-

On 03.05.2021 at 9.10 p.m., the accused along with Jobins George, S/o George, Injikkalayil Veedu, was found in illegal possession and transportation of 6.300 litres of Indian made foreign liquor on a motorcycle bearing registration No.KL 72 A 9639, knowing that the same had been unlawfully imported and transferred from Karnataka, meant for sale in Karnataka only, in front of the gate of Government L.P School at Palvelicham of Thrissilery Village of Wayanad District, in contravention of the provisions of the Abkari Act. Thus, the accused is alleged to have committed the above said offence.

3. The crime and occurrence, Ext.P5, in this case was registered by PW1, the investigating officer. He conducted the investigation and laid the final report before the Judicial First Class Magistrate Court-II, Mananthavady. On the basis of the final report, the Judicial First Class Magistrate Court-II, Mananthavady, took cognizance of the offence punishable U/s.58 of the Act.

4. On the appearance of the accused, copies of all relevant prosecution records were furnished to him as provided U/s.207 of the Cr.P.C and thereafter committed to the Court of Sessions as per the Order in CP.29/2022 dated 03.09.2024 of the Judicial First Class Magistrate Court-II, Mananthavady. On the basis of the Committal Order, the Principal Sessions Court, Kalpetta, took cognizance of the offence U/s.58 of the Act and made over the case to this court for disposal according to law.

5. On receipt of the records, summons was issued to the accused. The accused appeared before this court. The accused was permitted to continue on the same bail that had been executed during the crime stage. The learned Additional Public Prosecutor for the

State opened the case by describing the charge brought against the accused. On a perusal of the records of the case and documents submitted therewith, and after hearing the learned counsel for the accused and the learned Additional Public Prosecutor for the State, this court is satisfied that the offence punishable U/s.58 of the Act has been disclosed with, the charge was framed against the accused of the above said offence. When the charge was read over and explained to the accused in Malayalam to which he pleaded not guilty of the offence and claimed to be tried.

6. Then this case was posted for the evidence on the side of the prosecution. PW1 to PW5 were examined on the side of the prosecution. Exts.P1 to P14 were marked on the side of the prosecution. MO1 and MO2 series were also marked on the side of the prosecution. The remaining witnesses were given up by the learned Additional Public Prosecutor for the State.

7. On the closure of the prosecution evidence, the accused was questioned U/s.313(1)(b) of the Cr.PC. The accused denied all the incriminating circumstances appearing against him in the

evidence. The counsel for the accused has not asked for a hearing U/s.232 of the Cr.P.C. There was no ground to acquit the accused U/s.232 of the Cr.P.C. Thereafter, the accused was called upon to enter on his defence and adduce any evidence he may have in support thereof. The learned counsel for the accused submitted before the court that there is no defence evidence on the part of the accused. No documents are marked on the side of the accused.

8. The learned Additional Public Prosecutor for the State and the learned counsel for the accused have been heard.

9. The points that arise for consideration are:-

1. Whether the accused on 03.05.2021 at 9.10 p.m., was found in illegal possession and transportation of 6.300 litres of Indian made foreign liquor along with Jobins George on a motorcycle bearing registration No.KL 72 A 9639 in front of the gate of Govt.L.P School, Palvelicham at Thrissilery Village of Wayanad District, knowing that it was unlawfully imported and transported to Kerala and thereby committed the offence U/s.58 of the Act?
2. If so, what is the sentence to be imposed on the accused?

10. **Point No.1:-** The crime and occurrence report, Ext.P5, in this case was registered by the detecting officer/investigating officer PW1, who is the Excise Inspector of Excise Range Office, Mananthavady. He conducted the investigation and laid the final report before the Judicial First Class Magistrate Court-II, Mananthavady.

11. PW1 is the detecting officer as well as the investigating officer. While the detecting officer and his party were conducting patrolling duty on 03.05.2021 at night, he received a secret and reliable information regarding the transportation of liquor during night at a place called Shanamangalam. When the detecting officer and his party reached near Government Lower Primary School at Palvelicham, they saw a two wheeler stationed near the gate of the above said school. There were two persons on the two wheeler. They kept a bag on the motorcycle in between them. On seeing the detecting officer, they became embarrassed. When they tried to escape, the detecting officer nabbed them. The detecting officer found a red coloured bag containing something on the two wheeler. When he opened the bag in the presence of witnesses, he found tetra

packets containing a label, “windsor deluxe whisky, smooth blend, 90ml, for sale in Karnataka only” in English as well as Kannada language. The detecting officer opened one of the tetra packets and identified it as Indian made foreign liquor. He convinced the same to the witnesses.

12. The detecting officer ascertained the name and address of both accused. The detecting officer enlightened about the crime committed by them. They were arrested from the scene of crime. The arrest memo of the accused herein is marked as Ext.P1. The fact of arrest of the accused was intimated to his uncle as per Ext.P2 arrest intimation. PW4 and PW5 witnessed the arrest of the accused. They are witnesses to Ext.P1 arrest memo. The accused herein is arrayed as second accused in Ext.P5 crime and occurrence report. The other accused, Jobins George, shown as first accused in Ext.P5, is absconding now.

13. Apart from one opened tetra packet, two other tetra packets containing liquor were poured in a plastic bottle and drawn as a sample. This bottle was fastened with a twine, affixed wax on it and impressed the seal of the detecting officer. The remaining

contraband articles were tied together, wrapped with a cello tape, packed and sealed as aforesaid with the personal impression seal of the detecting officer. The red bag used for keeping the tetra packets was also seized. The same was packed, sealed and labelled as aforesaid at the scene of crime. The red bag is marked as MO1. The empty three tetra packets were also seized and labelled as aforesaid and they are marked as MO2 series. The above said articles were seized at the scene of crime as per Ext.P4 seizure mahazar. PW4 and PW5 are witnesses to Ext.P4 seizure mahazar. The seizure mahazar contains the signature of the witnesses, the detecting officer and the specimen seal impression of the detecting officer. The two wheeler used by the accused was seized as per Ext.P3 inventory.

14. After the registration of the crime, the detecting officer conducted the investigation. The detecting officer produced the accused before the Judicial First Class Magistrate-II, Mananthavady. The contraband articles were also produced before the committal court as per Ext.P6 property list prepared by the investigating officer. The accused was produced before the court after preparing Ext.P7 remand report. The investigating officer

inspected the scene of crime and prepared Ext.P12 scene mahazar of the crime on 21.01.2022 as seen from the scene mahazar of the crime. To prove the scene of crime, apart from the oral evidence of the detecting officer and Ext.P12, the prosecution examined PW2, the Village Officer of Thrissilery Village, who prepared Ext.P14 eyesketch of the scene of crime. PW2 deposed that he prepared the eyesketch after inspecting the scene of crime on 09.08.2021 based on the scene mahazar of the investigating officer. It is not possible to prepare a sketch on 09.08.2021 based on the scene mahazar prepared on 21.01.2022. So, the evidence tendered by PW2 is not reliable.

15. Thereafter, the investigating officer produced the contraband articles before the Deputy Excise Commissioner, Wayanad to follow the procedure U/s.53A of the Abkari Act. The Deputy Excise Commissioner produced the contraband articles before the Executive Magistrate.

16. As per section 53A (1) of the Abkari Act, the contraband, as soon as may, after its seizure, be disposed of by the authorized officer referred to in Sec. 67B, after following the procedure. Sec. 53A(2) mandates that where any contraband has been

seized, the authorized officer shall prepare an inventory of such contraband containing such details relating to their mode of description, quality, quantity, mode of packing, marks and numbers of such identifying the particulars of the contraband or the packing containers in which they are kept, place of origin and other particulars as the authorized officer may consider relevant to identify the liquor in any proceeding under this Act and make an application to the Magistrate having jurisdiction over the area where the seized liquor further purpose (a) certify the correctness of the inventory so prepared or (b) taking, in the presence of such Magistrate, photographs of such liquor, intoxicating drug or article and certifying such photographs as true; or, (c) allowing to draw representative samples of such liquor, intoxicating drug or article in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

17. The application prepared in accordance with 53A(2) of the Act is not produced before the court. To follow the procedure U/s.53A of the Act, PW1 produced the contraband articles before the Deputy Commissioner of Excise, Wayanad. After the seizure of the contraband articles on 03.05.2021, the Deputy Commissioner of

Excise produced the contraband articles before the Executive Magistrate on 15.06.2021. There is a delay of more than one month in producing the contraband articles before the Executive Magistrate. The reason for the delay in producing the contraband articles is not explained by the prosecution. The correctness certificate issued by the Executive Magistrate is marked as Ext.P8. However, the application prepared in accordance with 53 A(2) and the inventory prepared to get the correctness certificate signed by the Executive Magistrate is not marked in this case. The photographs of the contraband articles taken in the presence of the Executive Magistrate and the CD are marked as Ext.P10 series and Ext.P11. It is mandatory that the representative sample of the liquor has to be taken in the presence of the Executive Magistrate by the authorized officer, and the Executive Magistrate has to certify the correctness of the samples drawn. In this case, what is deposed to by the detecting officer is that he has drawn the representative sample from the scene of crime. The detecting officer has no authority to draw representative sample out of the contraband from the scene of crime. He is vested with no such power. After its production before the

authorized officer, the authorized officer has to comply with the mandatory provisions of the sec.53A of the Act. The representative sample taken from the scene of crime was sent for chemical analysis as per Ext.P9 forwarding note prepared by PW1. PW3 the Civil Excise Officer collected the representative sample from Judicial First Class Magistrate's Court and produced it before the Regional Chemical Examiner's Laboratory, Kozhikode. There is no evidence before the court that the representative sample was taken in the presence of the Executive Magistrate. The prosecution has no case that the representative samples of the contraband liquor were drawn in the presence of the Magistrate as required U/s.53A(2)(c) of the Abkari Act **(Reliance placed on 2025 KLT online 3083, Prabhu Prakash and Another V State of Kerala).**

18. The sub section 5 of sec.53A of the Act provides that notwithstanding anything contained in the Indian Evidence Act or the Code of Criminal Procedure, any code trying an offence under this Act shall treat the inventory, the photographs of liquor and any list of samples from under sub section (2) & (4) and certified by the Magistrate, a primary evidence in respect of such offence. The kind

of specimen seal affixed on the seizure mahazar and on the sample bottle is absent in the oral evidence of PW1. The detecting officer is expected to tell that he had affixed his personal seal on the sample bottle, and to tell the court what seal it is (**reliance placed on Krishnadas Vs. State of Kerala, 2019(2) KLD 200**). This evidence is missing in this case. In the absence of this evidence, it cannot be said that the sample which drawn from the contraband article allegedly seized from the accused reached the hands of the chemical examiner. It is for the prosecution to prove all links starting from the seizure of the contraband till the same reached the hands of the chemical examiner. There is no satisfactory link evidence to connect the accused with the sample analyzed in the laboratory. As per Ext.P13 chemical analysis report, ethyl alcohol was detected in the sample. Mere bringing of Ext.P13 report without complying with Section 53A of the Act is not sufficient to mulct the accused with liability. Since there is non-compliance of sec. 53A, this court has no hesitation to hold that there is no primary evidence in this case.

19. The seized contraband had the label “windsor deluxe whisky, smooth blend 90 ml, for sale in Karnataka only”. But the

mere presence of such a label on the bottles of liquor, in the absence of other evidence, is not sufficient to raise a presumption that the liquor was imported or transported from a place outside the State (see **Tippu Mohammed Vs. State of Kerala, 2015(1) KLD 59**). It is pertinent to note that even if a person found in possession of liquor may not be one who has brought the liquor into this State from another State and therefore, only for the reason that a person is found to be in possession of liquor, it cannot be concluded that he himself brought it into the State and thereby, he has imported it (See **Narayanan Nair Vs. State of Kerala; 2011(3) KLT 722**).

20. In **Balakrishna Rai Vs. State of Kerala, 2020(3) KHC 286**, it was held that in the absence of non-production of bulk quantity of seized contraband coupled with failure to follow the procedure prescribed in Sec.53A, the seizure itself becomes doubtful, and the accused will be entitled to the benefit of doubt. The above dictum applies to the facts of the case. The presumption U/s.64 of the Act is available only when the foundational facts are proved. Only when the initial burden is discharged, the burden shift to the accused. In this case, the foundational facts are not proved. So presumption U/s.64 of the Act is not available.

21. It is the settled principle of criminal jurisprudence that more serious offence strict degree of proof is required since a high degree of assurance is required to convict the accused. In this case, the possession of the liquor by the accused fully knowing well that it was unlawfully imported and transferred to Kerala is not at all proved by the prosecution. Therefore, this court has no hesitation to hold that the prosecution has miserably failed to prove the offence U/s.58 of the Act.

22. **Point No.2:-** In the light of the finding on point No.1, it does not require consideration. Hence, the accused is found not guilty of the offence under Section 58 of the Abkari Act.

In the result,

1. The accused is acquitted U/s.235(1) of the Cr.P.C for the offence punishable U/s.58 of the Abkari Act, Act 1 of 1077. The bail bond stands cancelled. The sureties are discharged. The accused is set at liberty.

2. MO1 and MO2 series shall be retained till the disposal of the case against the other accused, Jobins George.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 8th day of June, 2026)

ADDITIONAL SESSIONS JUDGE

List of Prosecution/Defence/Court Witnesses

A. Prosecution Witness

Rank	Name	Whether Eye witness, Police witness, Expert witness, Medical witness, Other witness
PW1	Radakrishanan P.G.	Police witness
PW2	Basheer K.K.	Police witness
PW3	Anoop E.	Police witness
PW4	M.B.Biju	Police witness
PW5	K.K.Manoj	Police witness

B. Defence Witness : Nil.

C. Court Witness : Nil

List of Prosecution/Defence/Court Exhibits:

A. Prosecution Exhibits:

1	P1/PW1	Arrest memo
2	P2/PW1	Arrest intimation
3	P3/PW2	Inventory (Motor Cycle)
4	P4/PW1	Seizure mahazar
5	P5/PW1	Crime and occurrence report
6	P6/PW1	Thondi list
7	P7/PW1	Remand report
8	P8/PW1	Correctness certificate

9	P9/PW1	Forwarding note
10	P10 series/PW1	Photographs
11	P11/PW1	CD
12	P12/PW1	Scene mahazar
13	P13/PW1	RFSL report
14	P14/PW2	Eye sketch

B. Defence Exhibits: Nil.

C. Court Exhibits: Nil

D. Material Objects: Nil

MO1 series	-	Red bag
MO2 series	-	Empty three tetra packets

ADDITIONAL SESSIONS JUDGE

Typed by: Manuel M.P.

Compared by: Meenakshy C.M.