

IN THE COURT OF THE ASSISTANT SESSIONS JUDGE (ADDL.), PALAKKAD

Present: Smt. Ramya.C.R,
Assistant Sessions Judge (Addl.), Palakkad.

Friday, the 22nd day of August, 2025

31st day of Sravana, 1947

Sessions Case No. 1055/2022

(C.P. No. 29/2022 of J.F.C.M-I, Alathur)

Complainant : State of Kerala Rep. By Sub Inspector of
Police, Nenmara Police Station in Cr. No.
119/2022.

Accused : (Rep. By Sri. Shiju Kuriakose,
Additional Public Prosecutor, Palakkad)
Muhammed Kutty, aged 33/2021,
S/o Ali,
Pattukadu Desom,
Kayaradi Post,
Kayaradi Village,
Ayilur Panchayath,
Chittur Taluk,
Palakkad District,
Pin-678510.

(Rep. By Adv. Raghu Das.S.G.)

Offence : U/s 55 (a) of the Abkari Act, 1st of 1077.
Plea of accused : Not guilty
Finding of Court : Not guilty
Sentence or order : Accused is acquitted under Section 235(1)
of the Cr.P.C for the alleged offence
punishable under Section 55 (a) of the Act.
His bail bond stands cancelled and he is set
at liberty.

Description of accused

Name	Father's Name	Occupation	Residence	Age
Muhammed Kutty	Ali	Nil	Pattukadu Desom,	33/2021

			Kayaradi Post, Kayaradi Village, Ayilur Panchayath, Chittur Taluk, Palakkad District, Pin-678510.	
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Date of:-

Occurrence	: 24.03.2022
Apprehension of accused	: 24.03.2022
Released on bail	: 20.04.2022
Final Report	: 22.04.2022
Committal	: 30.08.2022
Receipt of Record	: 04.01.2022
Appearance of accused	: 04.01.2023
Commencement of trial	: 26.02.2024
Questioning u/s.313(1)(b) of Cr.P.C	: 04.07.2025
Hearing u/s.232 of Cr. PC	: 19.07.2025
Argument u/s. 234 of Cr.P.C	: 08.08.2025
Close of trial	: 08.08.2025
Sentence or Order	: 22.08.2025
Explanation for delay	: No delay

The above case was committed by the Court of Judicial First Class Magistrate-I, Alathur to the Hon'ble Court of Sessions, Palakkad on 30.08.2022 and subsequently transferred to this Court for disposal.

The above Sessions Case having been finally heard on 08.08.2025 in the presence of the Learned Additional Public Prosecutor and the Learned Defence Counsel and having stood over for consideration to this day, the Court delivered the following:

J U D G M E N T

The Final Report in the above case was filed by the Sub Inspector, Nenmara in Crime No.119/2022 alleging offence punishable under Section 55(a) of The Abkari Act, 1st of 1077 (herein after referred to as 'the Act').

2. The prosecution case, in brief, is that on 24.03.2022 at 02.20 p.m. the accused as rider of KL-09-AL-4932 number scooter was riding the same through Kaipancherry - Adiparanda road and was transporting 12 liters of Indian Made Foreign Liquor in the motorcycle and he was intercepted at Karinkulam in front of the KSEB Assistant Engineers Office, and the accused is alleged to have committed the aforementioned offence.

3. Pramod.B., Sub Inspector of Police, Nenmara, had seized the contraband. He had arrested the accused. After reaching the police station, he had registered the FIR and had produced the sample bottles as well as accused before the court. He had also prepared the scene mahazar, partly questioned the witnesses. Then the investigation was taken up by Narayanan T.P., Sub Inspector of Police, Nenmara. The remaining witnesses were questioned and reduced into writing. He had prepared the body mahazar, taken steps for certifying the inventory, prepared the forwarding note and produced before the court. He completed the investigation and filed the final report before Judicial First Class Magistrate Court-I, Alathur.

4. On receipt of the Final Report, the learned Judicial First Class Magistrate-I, Alathur took cognizance of the offence and the case was taken on file as C.P. No.29/2022. On receipt of summons, the accused appeared before the Committal Court. He was enlarged on bail. He was furnished with copies of all relevant prosecution records as contemplated under Section 207 of The Code of Criminal Procedure, 1973 (herein after referred to as the Cr.P.C.), by the Committal Court. After complying with statutory formalities, the learned Magistrate committed

the case of accused as per order dated 30.08.2022 to the Hon'ble Court of Sessions, Palakkad under Section 209 (a) of the Cr.P.C.

5. On receipt of case records in C.P No. 29/2022, the Hon'ble Court of Sessions, Palakkad registered the case in the present number and made over to this Court for disposal.

6. When the accused had appeared before this Court, he was defended by a Counsel of his own choice. After hearing the prosecution and the defence under Section 227 of the Cr.P.C, charge was framed alleging offence punishable under Section 55(a) of the Act. When it was read over and explained to the accused, he pleaded not guilty and claimed to be tried.

7. On the side of the prosecution, P.W.1 to P.W.8 were examined and Ext.P1 to Ext.P19 documents were marked. Remaining witnesses were given up. On closure of the prosecution evidence, the accused was examined under Section 313 (1) (b) of the Cr.P.C. He denied all incriminating circumstances that appeared in evidence against him. The prosecution and the defence were heard under Section 232 of the Cr.P.C. There were no grounds to acquit the accused under Section 232 of the Cr.P.C and hence the accused was called upon to enter on his defence. No defence evidence was adduced.

8. Heard the learned Additional Public Prosecutor and the learned defence Counsel under Section 234 of The Cr.P.C.

9. The points that arise for determination are as follows:-

1. Had the accused committed offence punishable u/s.55(a) of the Act by riding KL-09-AL-4932 number scooter through Kaipancherry - Adiparanda road and was transporting 12 liters of Indian Made Foreign Liquor in the motorcycle and he was intercepted at Karinkulam in front of the KSEB Assistant Engineers Office by P.W.7 on 24.03.2022 at 2.20.P.M, as alleged by the prosecution?

2. What is the punishment, if any, to be awarded?

10. **Point No.(i):-** The detecting officer in this case is examined as PW7. His testimony regarding the incident is that, he was working as the Sub Inspector of Police Nenmara from the month of March, 2022 till July. On 24.03.2022, he and other Police officers were doing patrolling duty through their station limits and received a secret information that a person is transporting liquor in a blue colour scooter. The party stationed at Karimkulam in front of KSCB Office and was searching the vehicles.

11. At that time PW7 noticed a vehicle similar to the one which was referred to in the secret information. The vehicle was stopped and there was a box on the bike. PW7 enquired regarding the contents of the box and the rider could not give any satisfactory answer. Then after procuring the presence of witnesses, PW7 opened the box and it contained 24 bottles of Indian Made Foreign Liquor of the brand MC Dowells Indian brandy, having capacity of 500 ml each.

12. Two bottles were opened and PW7 tested the contents of the bottle by tasting and smelling the same and he was satisfied the contents to be Indian Made Foreign Liquor. The other members of the police party as well as witnesses were also satisfied regarding the same. PW7 then enquired regarding the authority of the person to possess liquor, for which he could not give any satisfactory answer. The whereabouts of the person transporting the liquor was revealed as Muhammad Kutty, S/o Ali, who is the accused facing trial in this case. In the presence of witnesses, PW7 had prepared the seizure mahazar, which is marked as Exhibit P1.

13. The accused was arrested then and there after preparing Exhibit P8 arrest memo and P9 arrest intimation. The body of the accused was searched for which inspection memo which is marked as Exhibit P10 was prepared. The two bottles which were opened by PW7 was chosen as samples and marked as S1 and S2. The sample bottles were produced before JFCM-I Alathur, along with Form 151(A), which is marked as Exhibit P11. The remaining bottles were numbered as P1 to P22. After reaching the Police station, PW7 had registered Exhibit P12 FIR against the

accused. Further, a report to add the complete name and address of the accused in the FIR was filed by PW7, which is marked as Exhibit P13. The same day itself accused was produced before the Magistrate along with Exhibit P14 Remand Report. PW7 claims to have visited the place on the same day itself and had prepared Exhibit P15 scene mahazar.

14. The independent witness in this case is examined as PW1. He could identify his signature in Exhibit P1 seizure mahazar, but denied the signature in arrest memo. The relevant part of contradiction in his 161 statement is marked as Exhibit P2. PW2 was examined to prove the scene mahazar prepared by PW7, but he denied the signature in the same. Then the investigation in this case was taken up by PW8 who was also working as the Sub Inspector of Police, Nenmara. As part of investigation he had prepared Exhibit P3 body mahazar of the vehicle.

15. PW3 who was working as Civil Police Officer in the same station is a witness to Exhibit P3 body mahazar and according to him the vehicle was inspected at the premises of the Police station on 19.04.2022 at 10.30.a.m. by PW8. The List 2 prepared by PW8 for producing the rest of the liquor bottles before the Deputy Excise Commissioner, Palakkad is marked as Exhibit P16. The inventory prepared by Deputy Excise Commissioner Palakkad is marked as Exhibit P17. The forwarding note is marked as Exhibit P18. The RC particulars regarding KL-09-AL-4932 number vehicle was collected by PW8. The joint RTO., Chittur is examined as PW4. He also deposed regarding the issuance of Exhibit P4 RC particulars to PW8. The owner of the vehicle is one Mr. Sojin B.

16. The inventory prepared by Deputy Excise Commissioner, Palakkad was certified by Tahsildar. PW5 is none other than Tahsildar Chittur on 30.03.2022. He has deposed that the inventory was certified in this case on 30.03.2022. At the time of certifying the inventory photograph was also taken. The inventory certificate is marked as Exhibit P5 and the photo is marked as Exhibit P6. PW8 had also collected the scene plan, which was issued by PW6. PW6 has deposed that while he was working as Village Officer, Kayaradi on 11.04.2022, as requested

by the Investigating Officer, he had prepared Exhibit P7 scene plan. The chemical analysis report in this case is marked as Exhibit P19 through PW8. As per the report, the samples which were marked as S1 and S2 contained Ethyl alcohol percentage by volume is 42.40 and 42.63. From the above discussion, it is born out that PW7 had arrested the accused at Kayaradi and had seized the liquor bottles.

17. Now the question is whether the legal formalities are complied by PW7 and the prosecution succeeded in establishing the allegation regarding the unlawful transportation of liquor by the accused. The learned counsel for the accused argued that the contradiction in 161 Statement of PW1 not proved. PW2 even denied the signature in Exhibit P15 scene mahazar, which is alleged to have prepared by PW7 on the same day. The specimen seal is not affixed in Exhibit P1 seizure mahazar. The fact that PW7 had opened 2 bottles is not mentioned in Exhibit P1 seizure mahazar. The time of registering the FIR is at 05.31.p.m. on 24.03.2022. Exhibit P15 scene mahazar is prepared at 05.15 p.m by PW7 on the same day itself which contains the crime number.

18. The arrest memo and arrest intimation also contains the crime number, pointed out the learned counsel. The inventory certificate is not, proved further argued the counsel. As rightly pointed out by the learned counsel, the definite case of the prosecution is that PW7 had arrested the accused from the spot. He had registered the FIR after reaching the police station. The testimony of PW7 is that he had prepared the arrest intimation and inspection memo at the place of incident itself. Then how the crime number of this case finds a place in all these documents will have to be explained by the prosecution.

19. PW7 has not complied the arrest formalities in this case as per the direction of Hon'ble Apex Court. Further, the specific case of PW7 at the time of evidence is that he had opened 2 liquor bottles at the place and had tested the contents of the bottles. Those 2 bottles which PW7 had opened were chosen for the purpose of sample. But in Exhibit P1 seizure mahazar it is stated that only one bottle was opened by PW7 and he tested the contents. Further, when the mahazar continues, it is

mentioned in the same that PW7 had taken the two bottles which he had opened as sample. Both cannot stand together. There is relevancy for this inconsistency particularly because the specimen seal of PW7 is not affixed on Exhibit P1.

20. In **Anil Varghese v. State of Kerala 2024 (6) KHC 490**, it has been held that, non production of specimen impression of seal affixed on the seizure mahazar before the court is very fatal and in such a situation it is difficult to hold that the sample which reached the Chemical Examiner's lab was the sample taken from the contraband allegedly seized from the possession of the accused.

21. At the time of cross examination PW7 deposed that he had produced the specimen seal in another separate sheet, which is not part of records. Similarly, it is his case that he had affixed the seal of SHO. On the other hand, the Inspector of Police is only the Station House Officer. If PW7 was holding the charge of SHO, it is for the prosecution to prove the same. The only independent witness examined by the prosecution as PW1 did not support the prosecution case.

22. It is the case of PW7 that he had seized KL-09-AL- 4932 number scooter from the spot. Exhibit P3 body mahazar was prepared by PW8 as well. Then what happened to the scooter is not clear from the records. Along with Exhibit P11 List of property only the sample bottles which are marked as S1 and S2 were produced before Judicial First Class Magistrate, Alathur. PW8 claims that he had produced rest of the contraband before Deputy Excise Commissioner, Palakkad and list for producing the same is marked as Exhibit P16. As per Exhibit P16, the bottles which are marked as P1 to P22 and a cardboard box were seen produced. The bike was not produced before Deputy Excise Commissioner, Palakkad as well.

23. The properties which were produced before Deputy Excise Commissioner, Palakkad, on 26.03.2022 was entrusted back. The inventory which is marked as Exhibit P17 does not contain any date. The inventory certificate issued by PW5, which is marked as Exhibit P5 is dated 30.03.2022. In the reference, it is stated that the report of the Deputy Excise Commissioner dated 16.04.2019 is certified by

PW5. All these discrepancies will have to be explained by the prosecution. Hence there is non compliance of Section 53A of the Act.

24. There is absolute non compliance of Section 53A of the Act. I place reliance on the decision rendered in **Balakrishna Rai v. State of Kerala (2020(3) KHC 286)**, in which it is held that:- *‘S.53A of the Act comes into play when the liquor seized under the Act has to be disposed of by the authorised officer immediately after its seizure. In such cases, the authorised officer shall prepare an inventory of such liquor. The inventory so prepared shall contain necessary details which are relevant to identify the liquor in any proceedings under the Act.’* It is further held that:- *‘However, when the procedure under S.53A of the Act is not adopted and strictly followed and when the bulk quantity of liquor is not produced also before the Court and when no evidence is also adduced to show that the bulk quantity of liquor has been destroyed or otherwise disposed of, seizure of such liquor itself becomes a doubtful matter. The accused will be then entitled to take advantage of such doubt.’* In toto, it is apparent from the evidence on record that there is no strict compliance of Section 53 A of the Act.

25. The sample bottles were received by SCPO Smidesh from Judicial First Class Magistrate, Alathur on 06.04.2022, but the bottles reached the laboratory only on 19.04.2022. Who was in custody of the sample bottles during this interregnum period is not explained by the prosecution. A legal obligation is cast on the prosecution to prove that it was the contraband substance allegedly seized from the possession of the accused eventually reached the Chemical Examiners laboratory in a tamper proof condition. The chain of custody of the contraband commencing from the place of occurrence to the stage when the contraband reached the laboratory is required to be established by the prosecution. In support of the said proposition I rely upon the dictum laid down in **Babu Raj Vs. State of Kerala 2021(6)KHC 92.**

26. The offence alleged in this case against the accused is violation of Section 55(a) of the Act. In order to attract the offence punishable under Section

55(a) of the Act there should be clear allegation that the accused imports, exports, transports, transits or possesses liquor or any intoxicating drug in contravention of the Act. The allegation raised against the accused is that he was transporting the contraband for the purpose of sale. At the most the accused is answerable only for possessing excess quantity of liquor and is liable for punishment under Section 13 r/w 63 of the Act. Conviction under Section 63 upon proof of violation of Section 13 of the Act can be done only by a Magistrate. In nutshell, it is apparent that the prosecution could not also prove the chain of custody of the so called sample from the time of alleged seizure till the receipt by laboratory.

27. In *toto*, it is obvious that the prosecution could not prove the guilt of the accused beyond reasonable doubt due to the aforementioned series of lacuna on their part. Hence the accused is found not guilty of the alleged offence punishable under Section 55 (a) of the Act. The point is found against the prosecution.

28. **Point No(ii)** :- On the basis of my finding on point no.(i) this point does not arise for consideration. This point is answered accordingly.

In the result,

Accused is acquitted under Section 235(1) of the Cr.P.C for the alleged offence punishable under Section 55 (a) of the Act. His bail bond stands cancelled and he is set at liberty.

(Dictated to C.A and typed by her in Office Computer, corrected and pronounced by me in Open Court, on this the 22nd day of August, 2025)

sd/-
Assistant Sessions Judge (Addl.),
Palakkad.

APPENDIX

Witnesses examined on the side of Prosecution:-

P.W.1 (C.W.2) 05.11.2024 : Prakasan, S/o Ramanathan.

- P.W.2 (C.W.6) 05.11.2024 : Shereef, S/o Moideenkutty.
- P.W.3 (C.W.8) 05.11.2024 : Subash.A., C.P.O., 6461 Nenmara Police Station.
- P.W.4 (C.W.10) 05.11.2024 : K.R.Raju, Sub Regional Transport Officer, Chittur.
- P.W.5 (C.W.12) 06.11.2024 : Amrithavalli.D, Tahsildar, Executive Magistrate, Chittur.
- P.W.6 (C.W.13) 06.11.2024 : Sabarinathan.K., Village Officer, Village Office, Kayaradi (In charge).
- P.W.7 (C.W.1) 02.04.2025 : Pramod.B., Sub Inspector of Police, Nenmara Police Station.
- P.W.8 (C.W.14) 03.06.2025 : Narayanan.T.P., Sub Inspector of Police, Nenmara Police Station.

Exhibits marked on the side of prosecution:-

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| P1 | : 24.03.2022 | Seizure mahazar marked through P.W.1 |
| P2 | : 24.03.2022 | Contradiction in 161 statement of CW2 marked through P.W.1 |
| P3 | : 19.04.2022 | Body mahazar marked through P.W.3 |
| P4 | : 01.04.2022 | RC particulars marked through P.W.4 |
| P5 | : 30.03.2022 | Inventory certificate marked through P.W.5 |
| P6 | : Nil | Photo marked through P.W.6. |
| P7 | : 11.04.2022 | Scene Plan marked through P.W.6 |
| P8 | : 24.03.2022 | Arrest memo marked through P.W.7 |
| P9 | : 24.03.2022 | Arrest intimation marked through P.W.7 |
| P10 | : 24.03.2022 | Inspection memo marked through P.W.7 |
| P11 | : 24.03.2022 | Form 151(A) marked through P.W.7 |
| P12 | : 24.03.2022 | FIR marked through P.W.7 |
| P13 | : 24.03.2022 | Name and address adding report marked through P.W.7 |
| P14 | : 24.03.2022 | Remand report marked through P.W.7 |
| P15 | : 24.03.2022 | Scene mahazar marked through P.W.7 |
| P16 | : 24.03.2022 | Property List II marked through P.W.8 |
| P17 | : 25.03.2022 | Inventory certification marked through P.W.8 |

P18 : Nil Forwarding note marked through P.W.8
P19 :24.05.2022 Chemical analysis report marked through P.W.8

Witnesses examined on the side of accused:- Nil

Exhibits marked on the side of accused:- Nil

Material objects marked: Nil

sd/-
**Assistant Sessions Judge (Addl.),
Palakkad.**

//True Copy//

**Assistant Sessions Judge (Addl.),
Palakkad.**

**Judgment in
Sessions Case No.1055/2022
Dated: 22.08.2025.**