

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

Present: Sri. Mithun Roy. K.,
Assistant Sessions Judge (Prl.), Palakkad.

Monday, the 14th day of July, 2025
(23rd day of Ashadha, 1947 S.E)

Sessions Case No. 1071/2022
(C.P. No. 20/2022 of J.F.C.M - I, Alathur)

Complainant	:	State Rep. by the Excise Circle Inspector, Excise Circle Office, Alathur in O.R. No. 63/2020. (Rep. By Adv. P. Muralidharan, Additional Public Prosecutor, Palakkad)
Accused	:	Mukesh, Aged 26/2020, S/o Rajan, Koshamedu Veedu, Mudappalur Desom, Vandazhi – II Village, Alathur Taluk. (Rep. By Adv. Titus Joseph)
Charge	:	U/s. 8(1) r/w. 8(2) of the Abkari Act.
Plea of accused	:	Not guilty
Finding of Court	:	Not guilty
Sentence or order	:	The accused is found not guilty of the offence punishable under Section 8(1) r/w. 8(2) of the Abkari Act and he is acquitted under Section 235(1) of the Cr.P.C for the said offence. The bail bond of the accused stands cancelled and he is set at liberty.

Description of accused

Name	Father's Name	Occupation	Residence	Age
Mukesh	Rajan	Coolie	Koshamedu Veedu, Mudappalur Desom, Vandazhi – II Village, Alathur Taluk.	26/2020

Date of:-

Occurrence	:	21.05.2020
Apprehension of accused	:	08.04.2021
Released on bail	:	21.04.2021
Final Report	:	05.03.2022
Committal	:	16.09.2022
Receipt of Record	:	13.10.2022
Appearance of accused	:	22.02.2023
Commencement of trial	:	09.10.2024
Questioning u/s.313(1)(b) of Cr.P.C	:	03.07.2025
Hearing u/s.232 of Cr. PC	:	04.07.2025
Argument u/s. 234 of Cr.P.C	:	07.07.2025
Close of trial	:	07.07.2025
Sentence or Order	:	14.07.2025
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 Session, Palakkad on 16.09.2022 and subsequently transferred to this Court for disposal.

The above Sessions Case having been finally heard on 07.07.2025 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 Excise Circle Inspector, Excise Circle Office, Alathur in O.R. No. 63/2020 alleging offence punishable under Section 8(1) r/w. 8(2) of the Abkari Act.

2. **The prosecution case, in brief, is as follows:-** On 21-05-2020 at 05.15 P.M, in front of the R. K. Motors Hero Honda service centre at Mudapallur – Vandazhi road, the accused was found in illegal possession of 2 litres of arrack. Hence the prosecution is alleging commission of the offence punishable under Section 8(1) r/w. 8(2) of the Abkari Act.

3. 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. 20/2022. The accused, who was on bail, had appeared before the Committal Court. He was furnished with copies of all relevant prosecution records as contemplated under Section 207 of the Code of Criminal Procedure, 1973 (for short, the Cr.P.C) by the Committal Court. After complying with statutory formalities, the learned Magistrate committed the case as per the Order dated 16.09.2022 to the Hon'ble Court of Session, Palakkad, under Section 209 (a) of the Cr.P.C.

4. On receipt of the case records in C.P No. 20/2022, the Hon'ble Court of Session, Palakkad had registered the case in the present number and made over the case to this Court for disposal.

5. 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; charge was framed against the accused for the offence punishable under Section 8(1) r/w. 8(2) of the Abkari Act and when it was read over and explained to the accused, he pleaded not guilty.

6. On the side of the prosecution, P.W.1 to P.W.5 were examined and Ext.P1 to Ext.P13 documents were marked. Remaining witnesses were given up by the prosecution as per the endorsements in this regard in the prosecution witness list.

7. 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.

8. The prosecution and the accused 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 evidence was adduced from the defence side.

9. At the time of final hearing, on the side of the prosecution, it was submitted that the matter can be taken as heard. Heard the defence side.

10. The points raised for determination are as follows:-

- (i) Has the accused committed the offence punishable under Section 8(1) r/w Section 8 (2) of the Abkari Act by possessing 2 litres of arrack ?
- (ii) What is the punishment, if any, to be awarded ?

11. **Point No. (i):-** The prosecution case, as mentioned *supra*, is mainly explained through P.W.2, who is the detecting officer. He deposed that, on 21-05-2020, while he was working as Alathur Excise Inspector; he along with his party were doing patrolling duty in the department vehicle and when they reached at Mutappallur junction, one person had stopped the vehicle and shared a secretive information that Mr. Mukesh S/o Rajan (accused) is selling arrack in front of K.R Motors Hero Honda service centre. According to P.W.2, on finding the said information as a believable one, they reached the said place and found one person standing there by holding a sack, as mentioned in the information and on seeing the party, the said person ran away from the spot after putting the sack down. P.W.2 had

deposed that they could not catch the accused, even though C.E.O.s namely Lindesh and Renjith had tried to catch him. It is the further case of P.W.2 that, on inspecting the sack, which was allegedly put down by the accused, in the presence of witnesses, plastic bottle having the capacity of 2 litres containing full of liquid was found and on smelling and tasting some of the liquid taken in his hand, it was found to be arrack and the said fact was convinced to the witnesses and others in the party. P.W.2's version is that 2 litres of arrack was found and the name and details of the accused were gathered on the basis of the information given by the witnesses and the parties assembled there. He further deposed regarding the drawing of sample and sealing the same after affixing label, sealing of the remaining arrack by affixing label and seizure of the sample, the remaining article and also the sack. He then identified Ext.P2 seizure mahazar, Ext.P3 Crime and Occurrence Report, Ext.P4 List – I, Ext.P5 forwarding note and also the accused from the witness box.

12. P.W.1 was examined to show that he had issued Ext.P1 scene plan, while he was working as Vandazhi – II Village Officer.

13. P.W.3 was examined, as he was cited as an independent witness in Ext.P2. However he had not supported the prosecution case and he denied his signature in Ext.P2. Hence the portion of statement allegedly given by P.W.3 to the Excise Officer was marked as Ext.P6 subject to proof.

14. P.W.4 had deposed that, on 01-08-2020, while he was working as Alathur Excise Circle Inspector, he took charge of the investigation and had interrogated the witnesses. He also deposed regarding the obtainment of Ext.P1 scene plan and the arrest of the accused as per Ext.P7 arrest memo after preparing Ext.P8 arrest intimation. He further identified and Ext.P9 remand report and Ext.P6 statement given by P.W.3 to him during interrogation. According to P.W.4, further investigation was done by another officer, as he was transferred.

15. P.W.5 is the investigating officer, who had filed Final Report after completing the investigation. He deposed regarding the preparation of Ext.P10 scene mahazar and obtainment of Ext.P11 inventory certificate and Ext.P12 series photographs (2 in numbers). He identified Ext.P13 chemical report received in this case and deposed that as per the chemical report, 44.73 % of ethyl alcohol was found from the sample.

16. The prosecution thus rely upon the afore-mentioned oral evidence of P.W.1,P.W.2, P.W.4 , P.W.5 and Exts.P1 to P13 to prove the commission of the alleged offence by the accused. *Per contra*, the learned counsel for the accused had submitted that there is no cogent evidence to link the accused with the alleged incident and also, there is no proper compliance of statutory formalities in this case.

17. I have scanned the evidence on record *in toto*. Section 8(1) of the Abkari Act prohibits the manufacture, import, export, transport, [without permit transit] or to possess, store, distribute, bottle or sell arrack in any form and Section 8(2) of the Act prescribes the punishment for the same. Section 3(6A) defines “Arrack” as ‘*any portable liquor other than Toddy, Beer, Spirits of Wine, Wine, Indian made spirit, foreign liquor and any medicinal preparation containing alcohol manufactured according to a formula prescribed in a pharma-copoeia approved by the Government of India or the Government of Kerala, or manufactured according to a formula approved by the Government of Kerala in respect of patent and proprietary preparations or approved as a bonafide medicinal preparation by the Expert Committee appointed under Section 68 A of the Act*’.

18. The fact that the contraband allegedly seized in this case contained ethyl alcohol @ 44.73% is clear from Ext.P13 chemical report. The definite suggestion put to P.W.5, the investigation officer, in his cross examination is that nothing as mentioned in Ext.P11 forwarding note was seized from the accused.

Though P.W.5 had denied the said suggestion, it is the burden of the prosecution to prove the elementary facts regarding the involvement of the accused and also the seizure of the contraband from the accused.

19. It is clear from the version of P.W.2 that the accused was not arrested from the spot on the date of the alleged incident (21-05-2020). It is admitted by P.W.2 in his cross examination that he was having no previous acquaintance with Mr.Mukesh (accused), prior to the alleged incident. There is no case for P.W.2 that the accused was shown to him either by P.W.4 or P.W.5 to confirm the identity of the accused. In fact, it is clear from P.W.4's evidence and from Ext.P7 arrest memo that the accused was arrested on his surrender only on 08-04-2021.

20. It the case of P.W.2 that the names and details of the accused were given by the witnesses and by the persons assembled there at the time of alleged incident. P.W.3 is one of the witnesses cited in Ext.P3 seizure mahazar allegedly prepared from the place and on the date of alleged incident. P.W.3 had not deposed that he or any other person had given information to P.W.2 about the details of the accused. In fact, P.W.3 had turned hostile to the prosecution case by deposing to the line that he had not seen anything and he also disowned his signature in Ext.P2. Even though Ext.P6 portion of statement of P.W.3 was proved through P.W.4; Ext.P6 *per se* is not helpful for the prosecution to fasten criminal liability upon the accused for the reason that the version given by P.W.3 before the Court is that he had not seen anything in this case. So the only available evidence of P.W.2 regarding the alleged seizure of contraband from the accused has to be viewed with great circumspection.

21. Even if it is assumed for a moment that the prosecution had duly proved the seizure of contraband from the accused; they are having a further duty to prove that there is compliance of statutory provisions in the Abkari Act for a successful prosecution in this case.

22. In **Baburaj V. State of Kerala [2021 (6) KHC 92]**, it is observed as follows:- 'A survey of the precedents on the subject leads to the conclusion that strict compliance of the rigors of the Statute and insistence on link evidence to ensure that the chain of allegations against the accused is substantiated to the fullest is the requirement of law and mandatory to establish a charge alleging the offence punishable under the Abkari Act.' Likewise, in **Vijayan @ Puthoor Vijayan v. State of Kerala [2021(5) KHC 347]**, the precautions and statutory formalities that have to be complied by the detection officer, property clerk and the chemical examiner while dealing with samples, are explained. In the said decision, it is held that :- 'While summarising the essential steps required to be followed to ensure tamper free collection and examination of the sample of the alleged contraband the following measures to be followed:

Steps to be followed by the officer collecting the sample:

(i) Collection of samples from the alleged contraband by the Officer concerned shall be transparent eschewing possibility of tampering the sample in any manner;

(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;

(iii) The sample so collected shall be produced before the jurisdictional Magistrate without any delay and the delay if any, shall be properly explained;

(iv) Specimen seal affixed on the sample should be produced before the Court along with the contraband for comparison;

(v) The said officer shall depose about compliance of the above before the Court while giving evidence.

14. Steps to be followed by the Thondy Clerk who is authorised to received the thondy:

(i) The Thondy Clerk shall verify the specimen seal produced before the

Court and to compare the same with a seal affixed in the mahazar, collected sample and in the forwarding note to ensure that the seal of the sample is intact and there is no scope for tampering the same in between its collection and production before the Court;

(ii) While forwarding the sample to the laboratory, the Thondy Clerk shall ensure that specimen sample seal is affixed on the forwarding note;

(iii) The forwarding letter shall contain the name of the official who is entrusted to handover the sample to the Chemical Examiner;

(iv) Specimen seal also to be provided to the Chemical Examiner for verification and to ensure that the specimen seal, so provided, is tallying with the seal affixed on the sample, to rule out the possibility of tampering while on transit of the sample;

(v) Thondy Clerk must be examined to prove compliance of the above, also to prove that he had been in custody of the sample from the date of receipt of sample till the date of forwarding and also to prove compliance of item No.(i) to (iv) steps stated herein above.

15. Measures to be ensured by the Chemical Examiner:

(i) Chemical Examiner shall ensure production of specimen seal to verify as to whether the specimen seal provided in the forwarding note and the sample forwarded are tallying to rule out tampering of a sample during transit;

(ii) In the chemical analysis report the said fact shall be stated so as to act upon the same without examining the Chemical Examiner as provided under S.293 Cr.P.C.

16. Unless and until the above safety measures are not ensured, it cannot be said that the sample of the contraband subjected to chemical examination by the Chemical Examiner is one collected from the possession of the accused. Any lacuna in this regard is a reason to disbelieve the recovery and the chemical analysis report. Consequently, the entire prosecution case would fail.'

23. In the decision rendered in **Balakrishna Rai V. State of Kerala [2020(3) KHC 286]**, 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.’*

24. In the case at hand, no document is forthcoming to support the case of P.W.5 in his cross examination that the properties were produced before deputy commissioner. So the proper custody of articles from its seizure till its production for getting the inventory certificate is not properly proved.

25. It is pertinent to note that Ext.P11 inventory certificate and Ext.P12 series photographs (2 in numbers) are issued by the Judicial Magistrate concerned. It is clarified in the decision reported in **Sathyan V. State of Kerala [2023 (3) KHC 97]** that a Judicial Magistrate cannot entertain an application under Section 53A of the Abkari Act since the Act contemplated by it is not a judicial one, but executive. At any rate, there is no evidence to show the disposal of articles by the authorized officer after its seizure. So it is apparent that there is non-compliance of Section 53A of the Abkari Act in its true letter and spirit.

26. Coming to the chain of custody of the sample allegedly collected in the case, Ext.P2 shows that the articles were seized on 21-05-2020. But Ext.P4 List I shows that the sample was received in court only 22-05-2020. So there is no proper explanation on the side of the prosecution regarding the delay of one day in reaching the sample before the Court. The custody of the sample from its alleged seizure till its reception by the Court is also not proved in the case.

27. That apart, from the covering letter dated 22-05-2020 appended along with Ext.P5 forwarding note, it can be seen that the sample was forwarded to the laboratory through the C.E.O. namely Rajagopal. But as per the endorsement in Ext.P13 chemical report, the sample was received in the laboratory only on 10-06-2020. So there is a delay of more than two weeks in reaching the sample before the laboratory after its entrustment to Mr. Rajagopal. The evidence of the said person namely C.E.O., Rajagopal is not available to explain about the inordinate delay in producing the sample before the laboratory. Likewise, the evidence of the property clerk of the Court concerned is also not available to prove the proper reception and custody of sample by the Court and also the entrustment of the sample to Mr.Rajagopal for producing the same before the laboratory. Hence it is apparent that the chain of custody of the so called sample from the time of its alleged seizure till its reception by the laboratory has been broken at various points.

28. Without any further pondering, it is obvious to conclude from the discussions and findings *supra* that the prosecution had failed to prove the alleged seizure of contraband from the accused and also the guilt of the accused for the offence punishable under Sections 8(1) r/w. 8(2) of the Abkari Act beyond reasonable doubt. This point is accordingly found against the prosecution.

29. **Point No (ii) :-** On the basis of my findings on Point No.(i), there is no scope for awarding any punishment to the accused.

In the result,

The accused is found not guilty of the offence punishable under Section 8 (1) r/w 8(2) of the Abkari Act and he is acquitted under Section 235(1) of the Cr.P.C for the said offence. The bail bond stands cancelled and the accused is set at liberty.

(Partly dictated to C.A, typed by him in Office computer, partly typed by me in my laptop, corrected and pronounced by me in Open Court, on this the 14th day of July, 2025)

Sd/-
Assistant Sessions Judge (Prl.)
Palakkad

APPENDIX

Witnesses examined on the side of Prosecution:-

P.W.1 (C.W.5)	28.05.2025	: Josh. K. H., Village Officer, Vandazhi – II Village.
P.W.2 (C.W.1)	05.06.2025	: K. S. Prashobh, Excise Inspector, Excise Range Office, Alathur.
P.W.3 (C.W.3)	05.06.2025	: Suresh, S/o Mani, Mudappalur Desom.
P.W.4 (C.W.6)	05.06.2025	: Muhammad Riyas. P. M., Excise Circle Inspector, Excise Circle Office, Alathur.
P.W.5 (C.W.7)	01.07.2025	: M. F. Suresh, Excise Circle Inspector, Excise Circle Office, Alathur.

Exhibits marked on the side of prosecution:-

P1	:	16.06.2021	Scene plan marked through P.W.1
P2	:	21.05.2020	Seizure mahazar marked through P.W.2
P3	:	21.05.2020	Crime and Occurrence Report marked through P.W.2
P4	:	21.05.2020	List - I marked through P.W.2
P5	:	Nil	Forwarding note marked through P.W.2

P6	:	27.02.2021	Relevant portion of 161 statement of P.W.3 marked through P.W.3
P7	:	08.04.2021	Arrest memo marked through P.W.4
P8	:	Nil	Arrest intimation marked through P.W.4
P9	:	08.04.2021	Remand report marked through P.W.4
P10	:	11.09.2021	Scene mahazar marked through P.W.5
P11	:	16.03.2021	Inventory certificate marked through P.W.5
P12 series	:	Nil	Photographs (2 in nos.) marked through P.W.5
P13	:	18.03.2022	Chemical analysis report marked through P.W.5

Witnesses examined on the side of accused:- Nil

Exhibits marked on the side of accused:-Nil

Material objects marked: Nil

Sd/-
Assistant Sessions Judge (Prl.)
Palakkad

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Assistant Sessions Judge (Prl.)
Palakkad.

Judgment in

S.C No. 1071/2022

Dated: 14.07.2025

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