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

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

Thursday, the 21st day of November, 2024
30th day of Karthika, 1946

SESSIONS CASE No. 1051/2022
(C.P. No. 48/2022 of J.F.C.M-I, Palakkad)

Complainant : Excise Inspector, Excise Range Office, Kuzhalmannam, in O.R No. 55/2021
(Rep. By Sri. Shiju Kuriakose, Additional Public Prosecutor, Palakkad)

Accused : Sukesh, aged 35/2021,
S/o Ramankutty, Mannadipura Veetil,
Chenganiyur Kavu Desom.
Mathur-I Village, Alathur Taluk.
(Rep. By Adv. K.N.Abhijith)

Charge : U/s 8(1) r/w 8 (2) of the Abkari Act, 1st of 1077

Plea of accused : Not guilty
Finding of Court : Not guilty
Sentence or order : The accused is acquitted under Section 235(1) of the Cr.P.C for the offence punishable under Section 8(1) r/w 8(2) of the Act. His bail bond stands cancelled and he is set at liberty.

Description of accused

Name	Father's Name	Occupation	Residence	Age
Sukesh,	Ramankutty	Coolie	Mannadipura Veetil, Chenganiyur Kavu Desom.	35/2021

			Mathur-I Village, Alathur Taluk	

<u>Date of:-</u>

Occurrence	:	23.05.2021
Apprehension of accused	:	19.07.2021
Released on bail	:	26.08.2022
Final Report	:	30.06.2022
Committal	:	30.08.2022
Receipt of Record	:	13.10.2022
Appearance of accused	:	04.01.2023
Commencement of trial	:	20.11.2023
Questioning u/s.313(1)(b) of Cr.P.C	:	16.10.2024
Hearing u/s.232 of Cr. PC	:	29.10.2024
Argument u/s. 234 of Cr.P.C	:	08.11.2024
Close of trial	:	08.11.2024
Sentence or Order	:	21.11.2024
Explanation for delay	:	No delay

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

The above Sessions Case having been finally heard on 08.11.2024 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 Inspector, Kuzhalmannam in Crime No.55/2021 of Excise Range Office, Kuzhalmannam alleging offence punishable under Section 8(1) r/w 8 (2) of The Abkari Act, 1st of 1077 (herein after referred to as 'the Act').

2. The prosecution case, in brief, is as follows:- On 23.05.2021, at 11.15 A.M, the accused was found in possession of 5 litres of arrack while he was travelling in KL-49-D-3495 number motor cycle. The accused was intercepted near Electric Transformer No.2/220 which situates near Chenganiyur Kavu Temple in Mathur No.I Village. Upon seeing the Excise party the accused had abandoned the bike and had fled away. Hence the accused is alleged to have committed the aforementioned offence.

3. The offence was detected by G. Santhosh Kumar Excise Inspector, Excise Range Kuzhalmannam. He had registered crime and occurrence report. He had taken steps to forward the sample for chemical analysis. The rest of the contraband was produced before Deputy Excise Commissioner, Palakkad. Thereafter, Excise Inspector of Excise Range Office Kuzhalmannam had taken up the investigation. He had questioned the witnesses and reduced the same into writing. He had prepared the scene mahazar as well as scene plan. He had collected the RC particulars of the vehicle. He completed the investigation and filed final report before this Court.

4. On receipt of final report, the learned Judicial First Class Magistrate-I, Palakkad took cognizance of the offence and the case was taken on file as C.P No. 48/2022. The accused 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 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. 48/2022, 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 on summons, he was defended by a Counsel of his own choice. Learned Additional Public Prosecutor opened the prosecution case. After hearing the prosecution and the defence under Section 227 of the Cr.P.C, charge was framed for the offences punishable under Section 8(1) r/w 8(2) 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.W4 were examined and Ext.P1 to Ext.P14 documents were marked of which Ext.P6 and Ext.P7 were marked as subject to proof. 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 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 by the accused.

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) Has the accused committed the offence punishable u/s.8(1) r/w 8(2) of the Act by illegally possessing 5 litres arrack in a plastic can while transporting the same in his motor cycle and the

offence was detected by P.W.1 near to the Transformer which situates near Chenganiyur Kavu Temple as alleged by the prosecution on 23.05.2021 at 11.15.A.M ?

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

10. **Point No. (i):-** The prosecution allegation is that the accused was found in illegal possession of arrack. The detection of the alleged offence was done by P.W.1, who was the then Excise Inspector of E.R.O, Kuzhalmannam. According to him, while he was conducting patrolling duty on 23.05.2021 at about 11.00.A.M he was passing from Mathur to Chenganiyur Kavu. When he reached near Transformer he noticed KL-49-D-3491 number motor cycle coming from opposite direction driven by a person wearing maroon colour shirt and Saffron colour dhoti. Noticing the police party he tried to turn back. When P.W.1 stopped the jeep he ran through the paddy fields which situates on the back side of the Transformer. Though P.W.1 and C.E.O.Sivakumar followed him their attempt to intercept the person was in vein.

11. P.W.1 and others returned back and examined the bike. He noticed something hanging in a big shopper on the back handle of the bike. There was a plastic can inside the big shopper filled with 5 litres of liquid. Upon examination of the liquid inside the bottle, he could understand that the same is arrack. The other officials and the witnesses were also satisfied that the liquid which the bottle contain is arrack. Thereafter, he had seized the liquor after preparing Ext.P2 seizure mahazar. Whereabouts of the person who ran away abandoning the arrack bottle was revealed as disclosed by the witnesses.

12. P.W.1 continued to depose that he had taken 200 m.l of liquid as sample in a glass bottle which can contain 375 m.l. Thereafter the sample bottle and

the arrack can were seized and his personal seal was affixed. He had registered Ext.P1 crime and occurrence report against the accused. Rest of the articles excluding the sample were produced before Deputy Excise Commissioner, Palakkad along with Ext.P5 list II. The sample was produced before JFCM, No.I, Palakkad along with Ext.P4. It was P.W.1 who had taken steps to forward the sample for chemical analysis. The forwarding note is marked as Ext.P3.

13. One among the officers who were present in the Excise party is examined as P.W.3. The accompanying officer also narrated in detail as to the detection of the offence. He had later arrested the accused on 19.07.2021 after preparing Ext.P8 arrest memo and Ext.P9 Arrest intimation. The independent witnesses whom P.W.1 claims to have witnessed the search and seizure are cited as C.W.3 and C.W.4. Among them C.W.4 was given up and C.W.3 is examined as P.W.2. He did not support the prosecution case and the contradiction in his 161 statement is marked as Ext.P7 subject to further proof. But while P.W.4, the investigating officer was examined, Ext.P7 was not brought to his notice and hence Ext.P7 statement is not proved. With respect to the other facts deposed by P.W1, P.W.2 claims to be totally ignorant. According to him, his signature was obtained in Ext.P2 at his residence.

14. As earlier stated there was no spot arrest as accused is alleged to have fled away after noticing the Excise Party. The scene plan is prepared by P.W.4 as part of investigation apart from Ext.P10 scene mahazar.

15. As per Ext.P10 scene mahazar P.W.4 had reached the place of incident after travelling 5 kilometres through Kuzhalmannam Mathur road. He reached near the Transformer in front of Chenganiyur Kavu Temple. On the back

side of the Transformer situates property of Sreenivasan. Transformer No.2/220 situates on the southern side of Mathur Chenganiyur Kavu road. The sample bottle was analysed by Chemical Examiners Laboratory Kakkanad. The report is marked as Ext.P14. From the report percentage by volume of Ethyl Alcohol detected is 39.92. From the above discussion it is clear that P.W.1 had seized contraband which was abandoned by a person near the Transformer No. 2/220 which situates near Chenganiyur Kavu Temple. The sample which he took was having Ethyl Alcohol content.

16. Now the question is whether the accused is answerable for the illegal possession of contraband. The learned Counsel for the accused argued that admittedly there is no spot arrest and according to P.W.1 and 3 the accused was identified from the statement of witnesses. No such statement is produced before this Court or they are not cited as a witness. Nothing is stated in Ext.P2 with respect to the identifying features of the accused. Ext.P6 photo is also not proved. The Learned Counsel summed up his argument by contenting that the accused is rightly entitled for an acquittal.

17. In Ext.P2 it is stated that accused turned back several times while he ran away from the spot. But nothing is deposed by P.W.1 with respect to the same. According to P.W.1 he made an enquiry and whereabouts of the accused was revealed. At the time of cross-examination he deposed that the identity of the accused was disclosed by the witnesses. He has no previous acquaintance with the accused. Thereafter, he has never seen the accused. Only in the dock he later had seen the accused. The accused was arrested by P.W.3 based on an order obtained from Hon’ble Sessions Judge. At the time of cross-examination he also claimed that name of the accused was disclosed by witnesses and residents nearby. As part of investigation P.W.4 never made an attempt to identify the accused either by P.W.1 or

by P.W.3. Hence as rightly argued by learned counsel for the accused absolutely there is no evidence to connect the accused with this case. In otherwise identity of the accused is doubtful.

18. **In Andikutty Vs. State of Kerala (2023KHC 777)** our Hon'ble High Court has held that modalities prescribed under Section 53 A of the Act for disposal of the seized liquor, intoxicating drugs etc, has to be complied with in it's letter and spirit. If there is a violation of Section 53A, entire prosecution case will be vitiated on that ground itself. Here P.W.4 has not deposed anything as to how the arrack was disposed of by him which is in violation of the dictum laid down by Hon'ble High Court. The motor cycle which is alleged to have used by the accused is not produced either before this Court or before Deputy Excise Commissioner. The sample was produced before JFCM-I Palakkad only on 18.06.2021. Rest of the arrack was produced before Deputy Excise Commissioner, Palakkad on 24.05.2021 and was entrusted back. What happened to the said arrack is not revealed from records. No inventory was prepared by Deputy Excise Commissioner, Palakkad and was not certified by Tahsildar concerned. What happened to the big shopper is also not explained by the prosecution.

19. From the above discussion it is clear that the prosecution failed to account possession of the accused of the contraband seized by P.W.1. P.W.4 without following the procedure under Section 53A of the Act disposed of the contraband and as per the dictum of the Hon'ble High Court in Andikutty's case the same is fatal to the prosecution case. The entire prosecution case as to the seizure is doubtful and the accused is rightly entitled for benefit of doubt. The point is found against the prosecution.

20. **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,

The accused is acquitted under Section 235(1) of the Cr.P.C for the offence punishable under Section 8(1) r/w 8(2) of the Act. His bail bond stands cancelled and he is set at liberty.

Dictated to Confidential Assistant, typed by her, corrected and pronounced by me in open court on this the 21st day of November, 2024.

sd/-
Assistant Sessions Judge (Addl.)
Palakkad

APPENDIX

Witnesses examined on the side of Prosecution:-

P.W.1	(C.W.1)	21.03.2024	G.Santhosh Kumar, Excise Inspector, Excise Range Office, Kuzhalmannam.
P.W.2	(C.W.3)	21.03.2024	Radhakrishnan. S/o.Subramaniyan.
P.W.3	(C.W.2)	19.06.2024	Senthilkumar.C, Assistant Excise Inspector, Excise Range Office, Kuzhalmannam.
P.W.4	(C.W.5)	28.09.2024	V.K.Sankar Prasad, Excise Inspector, Excise Range Office, Kuzhalmannam.

Exhibits marked on the side of prosecution:-

P1	23.05.2021	Crime and Occurrence Report marked through P.W.1
P2	23.05.2021	Seizure mahazar marked through P.W.1
P3	Nil	Forwarding note marked through P.W.1
P4	23.05.2021	Sample List marked through P.W.1
P5	23.05.2021	Thondy list marked through P.W.1
P6	23.05.2021	Photo marked through P.W.1 (Subject to Proof)

P7	24.05.2022	161 statement of C.W.3 marked through P.W.2 (Subject to Proof)
P8	19.07.2021	Arrest memo marked through P.W.3
P9	19.07.2021	Arrest Intimation marked through P.W.3
P10	02.06.2022	Scene mahazar marked through P.W.4
P11	09.06.2022	Scene Plan marked through P.W.4
P12	19.11.2021	RC Particulars marked through P.W.4
P13	23.07.2021	Inventory certificate marked through P.W.4
P14	04.01.2022	Chemical Analysis Report marked through P.W.4

Witnesses for the defence: **Nil**

Exhibits for the defence:-

Material objects:- Nil

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

Assistant Sessions Judge (Addl.),
Palakkad.

Judgment in
S.C No. 1051/2022
Dated: 21.11.2024.