IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

WEDNESDAY, THE 9TH DAY OF JULY 2025 / 18TH ASHADHA, 1947

CRL.A NO. 400 OF 2014

CRIME NO.46/2012 OF PEERMEDU EXCISE RANGE OFFICE, IDUKKI

AGAINST THE JUDGMENT DATED 19.03.2014 IN SC NO.280 OF 2013 OF THE III ADDITIONAL DISTRICT & SESSIONS COURT(ADHOC-I), THODUPUZHA, ARISING OUT OF THE ORDER/JUDGMENT DATED IN CP.NO.103 OF 2012 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, PEERUMEDU

APPELLANT/ACCUSED:

BABY
AGED 64 YEARS
S/O SREEDHARAN, PATHALIL HOUSE,
OTTAMARAM DESOM, UPUTHARA VILLAGE, PEERMADE TALUK.

BY ADVS.
SRI.JOBY GEORGE
SRI.M.V.RAJENDRAN NAIR

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY EXCISE INSPECTOR ERO, PEERMADU,
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA

ADV.
SMT.N.S.HASNA MOL, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 07.07.2025, THE COURT ON 09.07.2025 DELIVERED THE FOLLOWING:

'C.R.'

JUDGMENT

The sole accused in S.C. No. 280/2013, on the file of the Additional Sessions Court-III (ADHOC-I), Thodupuzha, has preferred this appeal challenging the judgment of conviction and order of sentence passed against him for the offence punishable under Section 8(2) r/w 8(1) of the Abkari Act.

2. The prosecution allegation in brief is that, on 22.07.2012, at 7.50 a.m., near the muster shed of a tea factory at Ottamaram in Upputhara Village, the accused was found in possession of 2 liters of arrack in a plastic can in contravention of the provisions of the Abkari Act and thereby committed an offence punishable under Section 8(2) r/w 8(1) of the Abkari Act.

3. Upon conclusion of the investigation, the final report was laid before the Judicial First Class Magistrate Court-I, Peermade. Being satisfied that the case is one exclusively triable by a court of session, the learned Magistrate, after complying with all legal formalities, committed the case to the Court of Session, Thodupuzha, under Section 209 of Cr.PC.

4. The learned Sessions Judge, having taken cognizance of the offence, made over the case to the Additional Sessions

Court-III (ADHOC-I), Thodupuzha, for trial and disposal. On the appearance of the accused, the learned Additional Sessions Judge, after hearing both sides under Section 227 of Cr.P.C. and upon perusal of the records, framed a written charge against the accused for the offence punishable under Section 8(2) r/w 8(1) of the Abkari Act. When the charge was read over and explained to the accused, he pleaded not guilty and claimed to be tried.

5. During the trial, from the side of the prosecution, altogether five witnesses were examined as PW1 to PW5 and marked Exts. P1 to P11. After the completion of prosecution evidence, the accused was questioned under Section 313 of Cr.P.C., during which he denied all the incriminating materials brought out against him. On finding that this is not a case of no evidence and hence, the accused could not be acquitted under Section 232 of Cr.P.C., he was called upon to enter on his defence and adduce any evidence that he may have in support thereof. From the side of the accused, one witness was examined as DW1, and two documents were marked as Exts. D1 and D2.

6. After trial, the accused was found guilty of the offence punishable under section 8(2) r/w 8(1) of the Abkari Act, and he was convicted and sentenced to undergo simple imprisonment for

one year and to pay a fine of Rs.1,00,000/-. In default of payment of the fine, the accused was ordered to undergo simple imprisonment for two months. Assailing the said judgment of conviction and the order of sentence passed, the present appeal has been preferred.

7. I heard Sri.M.V.Rajendran Nair, the learned counsel for the appellant, and Smt.N.S.Hasnamol, the learned Public Prosecutor.

8. The learned counsel for the appellant would submit that the trial court failed to appreciate the facts and evidence brought on record in this case in its proper perspective and arrived at a conclusion of guilt in a hasty and erroneous manner. According to the counsel, the accused was implicated in this case on the basis of some summaries and conjectures. It was contended that the procedures relating to seizure and sampling were not done in a foolproof manner, leaving room for tampering. The learned counsel further submitted that the hostility shown by the independent witnesses to the prosecution case is fatal, especially when the seizure and sampling procedures were not in a tamper-proof condition. According to the counsel, it is unsafe to act upon the solitary evidence of the detecting officer to sustain a

conviction in this case. The counsel urged that the prosecution failed to establish sufficient link evidence to show that the sample allegedly drawn from the spot of detection is the very same sample that reached the chemical examiner's laboratory for analysis.

9. In response, the learned Public Prosecutor would contend that, to eliminate any possibility of future allegations of manipulation or tampering, all the procedural formalities were scrupulously followed in this case. According to the learned Public Prosecutor, the sample was drawn at the spot of detection itself and was produced before the court on the very same day. Likewise, the sample seal finds a place in crucial documents like seizure mahazar, property list, forwarding note, etc., and therefore, there is no reason to doubt that the sample drawn at the time of detection is the very same sample that reached the hands of the chemical examiner for analysis.

10. A perusal of the records reveals that to bring home the guilt of the accused, the prosecution mainly relies on the evidence of the detecting officer and the documentary evidence produced in this case. This case was detected by the Preventive Officer attached to Peermade Excise Range, on 22.07.2012. When the

detecting officer was examined as PW1, he narrated the entire sequence of events leading to the detection of the contraband and its seizure procedures.

11. According to PW1, on 22.07.2012, while he, along with the Assistant Excise Inspector, Excise Range, Peermade, was conducting a special ride, the latter received information that the accused in this case was possessing arrack near a muster shed of a Tea estate. Upon getting the said information, as instructed by the Assistant Excise Inspector, PW1, along with two other Excise Guards, proceeded to the location and, when they reached near the muster shed of a Tea estate, the accused was found walking through the premises of the said shed carrying a plastic can in his hand. Then he along with the Excise party, restrained the accused and conducted an inspection of the plastic can in the presence of two independent witnesses. The said plastic can was of five-liter capacity, and two liters of arrack were found in it. Thereafter, he had drawn a sample from the arrack and prepared a Mahazar. Ext.P1 is the seizure mahazar prepared. The accused was arrested on the spot.

12. The independent witnesses examined by the prosecution to prove the alleged seizure are PW3 and PW4. However, during

the examination, both of them turned hostile to the prosecution by deposing that they did not witness the incident in this case. While considering the question of whether the hostility shown by the independent witnesses had any serious bearing in this case, it is to be borne in mind that it is a common occurrence that the independent witnesses in Abkari cases are turning hostile to the prosecution in almost all cases, for reasons only best known to them. The hostility shown by independent witnesses in Abkari cases is of little significance if the evidence of the official witnesses including the detecting officer, is found to be convincing and reliable particularly when there is nothing to indicate that the detecting officer bore any grudge or animosity towards the accused that would motivate him to falsely implicate the accused in a case of this nature.

13. However, when a court is called upon to rely solely on the evidence of the detecting officer, the court must act with much care and circumspection. It is incumbent upon the prosecution to satisfy the court that all the procedures relating to the search, seizure, and sampling of the contraband were carried out in a foolproof manner, thereby ruling out any possibility of tampering. In the case at hand, the seizure mahazar prepared by

PW1 is marked as Ext.P1. A perusal of Ext.P1 reveals that the specimen impression of the sample is affixed in the seizure mahazar. Ext.P4 property list, in terms of which the sample was produced before the court, also bears the specimen impression of the seal used in this case. Furthermore, a perusal of Ext.P4 property list reveals that the sample was produced before the court on the next day of the detection itself.

14. The forwarding note, which is one of the crucial documents as far as an Abkari case is concerned, also bears the sample seal of the detecting officer. Therefore, it could be seen that the chemical examiner got sufficient opportunity to compare the seal found on the same with the seal found on the sample. Notably, in the chemical analysis report, which is marked as Ext.P11, it is specifically mentioned that the seals on the bottles were intact and found tallied with the sample seal provided in the forwarding note. Therefore, I find no reason to interfere with the impugned judgment on the ground of any improper compliance of formalities regarding seizure and sample.

15. However, in a case of this nature, it is the bounden duty of the prosecution to show that the sample drawn from the spot remained in the safe custody until it reached the hands of

the chemical examiner for analysis. Only when such a secure and uninterrupted chain of custody is proved it can be held that the sample analysed is the very same one drawn from the contraband allegedly seized from the accused. Keeping in mind the above while reverting to the case at hand, it can be seen that in Ext.P6 forwarding note, the name of the Excise Guard with whom the contraband was entrusted from the court for producing before the chemical examiner's laboratory does not find a place. When the space designated in the forwarding note for recording the name of the Excise Guard remains blank, it is incumbent on the part of the prosecution to examine the Thondi clerk as well as the Excise Guard as a witnesess to prove that there was a tamper-proof dispatch of the sample from the court and an untampered transit of the same to the laboratory. The same view has been taken by this Court in **Kumaran P. v. State of Kerala and Another** (2016 (5) KHC 632). However, in the case at hand, neither the Thondi clerk nor the Excise Guard with whom the sample was entrusted from the court was examined. The absence of such examination enures to the benefit of the accused. Therefore, in the facts and circumstances of the present case, I have no hesitation in holding that the prosecution failed to prove the link

evidence pertaining to the safe custody of the sample until it reached the hands of the chemical examiner. The said lapse is fatal to the prosecution, and hence, it is liable to be held that the prosecution failed to prove the charge beyond a reasonable doubt.

In the result, the appeal is allowed and the judgment of conviction and the order of sentence passed against the appellant/accused for the offence punishable under Section 8(2) r/w 8(1) of the Abkari Act is set aside and he is acquitted. Fine amount, if any, has been deposited by the appellant/accused, the same shall be refunded to him in accordance with law.

Sd/-
JOBIN SEBASTIAN
JUDGE

sjb/07.07.2025