

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 31ST DAY OF OCTOBER 2016/9TH KARTHIKA, 1938

CRL.A.No. 369 of 2009 (A)  
-----

SC 905/2007 of ADDITIONAL SESSIONS COURT (ADHOC)-II, KOLLAM

APPELLANT/ACCUSED:  
-----

ASHOKAN, S/O.MADAVAN,  
KUNNATHARA VEEDU, ADINADU VADAKKU MURI,  
KULASEKHARAPURAM VILLAGE, KARUNAGAPPALLY,  
KOLLAM DISTRICT.

BY ADV. SRI.B.MOHANLAL

RESPONDENT/COMPLAINANT:  
-----

STATE OF KERALA, REPRESENTED BY THE  
EXCISE INSPECTOR, KARUNAGAPPALLY EXCISE RANGE,  
KOLLAM DISTRICT THROUGH THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.

BY SR. PUBLIC PROSECUTOR SRI.ALEX M. THOMBRA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON  
31-10-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DSV/1/11/16

B. KEMAL PASHA, J

=====  
Crl.Appeal No.369 of 2009

=====

Dated this the 31<sup>st</sup> day of October, 2016

### J U D G M E N T

The appellant is the accused in Sessions Case No.905 of 2007 of the Additional Sessions Court (Adhoc-II), Kollam, who stands convicted under Section 8(2) of the Abkari Act and sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹1,00,000/-, in default, to undergo simple imprisonment for six more months.

2. The prosecution case is that on 03.01.2004, at 6.30 p.m., the accused was found transporting 375 ml of arrack contained in a bottle through the Mannoor Colony Road, Kulasekharapuram Panchayat, in contravention of the provisions of the Abkari Act.

3. PW2 Preventive Officer of Excise, Karunagappally Excise Range detected the offence. A

sample of 200 ml was drawn and the contraband was seized through Exhibit-P1 mahazar. He placed the accused under arrest through Exhibit-P2 arrest memo. He registered Exhibit-P4 crime and occurrence report and produced the property before court on the next day through Exhibit-P5. Forwarding note was furnished, the copy of which is Exhibit-P6. Exhibit-P7 is the certificate of chemical examination. It was PW4 Excise Inspector, who conducted the investigation and filed the Final Report.

5. On the side of the prosecution, PW1 to PW4 were examined, Exhibits-P1 to P7 were marked and MO1 was identified. The court below found the accused guilty of the offence punishable under Section 8(2) of the Abkari Act, convicted him thereunder, and sentenced him as aforesaid.

6. Heard the learned counsel for the appellant and the learned Senior Public Prosecutor.

7. The learned counsel for the appellant has pointed out that PW2 was not competent or authorised to register the crime and occurrence report. Therefore, the foundation of the case itself has become illegal. Apart from that it has been further argued that there is absolutely nothing in this case to show that the contraband involved in the case is arrack.

8. As per notification No.SRO 234/1967 all officers of the Excise Department, not below the rank of Excise Inspectors, were appointed as Abkari Officers to perform the acts and duties mentioned in Sections 40 to 53 of the Abkari Act, within the area for which they were appointed. PW2 was admittedly the Preventive Officer of Excise. It seems that he has registered Exhibit-P4 crime and occurrence report, by styling himself as 'in charge of Excise Inspector'. No order has been produced to show that PW2 was

appointed as Excise Inspector of the Karunagappally Excise Range on the date on which Exhibit-P4 was registered.

9. The prosecution has also no case that PW2 was appointed as Excise Inspector on the date on which Exhibit-P4 was registered. Matters being so, he was not competent or authorised to register the crime and occurrence report.

10. Apart from the above, either PW2 or PW3 have no case that they have identified the contents of the bottle by tasting and smelling it, as arrack. It is true that the sample contained ethyl alcohol as per the contents of Exhibit-P7 certificate of chemical analysis. The mere fact that it contained ethyl alcohol alone, does not make it arrack. Only when it is arrack, an offence under Section 8(2) can be attracted. There is no sufficient evidence to prove that the sample was arrack. Matters being so, the conviction and sentence

passed by the court below are liable to be set aside.

In the result, this Crl.Appeal is allowed and the conviction and sentence passed by the court below are set aside. The appellant is acquitted.

Sd/-

**B. KEMAL PASHA,  
JUDGE.**

DSV/31/10/16

// True Copy //

P.A. To Judge