

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

MONDAY, THE 26TH DAY OF FEBRUARY 2018 / 7TH PHALGUNA, 1939

CRL.A.No. 50 of 2007

AGAINST THE ORDER/JUDGMENT IN SC 208/2001 of ADDITIONAL SESSIONS COURT  
(ADHOC)-II, KALPETTA DATED 08-12-2006

APPELLANT(S)/ACCUSED

RAMESAN, S/O. MADHAVAN,  
PUTHUPARAMBIL HOUSE, PANDICHIRA P.O., , PULPALLY, WAYANAD  
DISTRICT.

BY ADVS.SRI.SHAJI THOMAS PORKKATTIL  
SRI.BINU PAUL

RESPONDENT(S)/STATE & COMPLAINANT:

1. STATE OF KERALA, REPRESENTED BY  
ITS PUBLIC PROSECUTOR, , HIGH COURT OF KERALA, ERNAKULAM.
2. EXCISE INSPECTOR,  
SULTHAN BATHERY.

BY PUBLIC PROSECUTOR SRI. D. CHANDRASENAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26-02-2018,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SHG/

**K.P. JYOTHINDRANATH, J.**

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**Crl.A.No.50 of 2007**  
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**Dated this the 26<sup>th</sup> day of February, 2018**

**J U D G M E N T**

In this appeal the challenge is against the judgment of conviction and sentence made in SC 208/001 on the files of the Additional Sessions Court (Adhoc) II Kalpetta. The conviction is under Section 55 (a) of the Abkari Act. The sentence is to undergo rigorous imprisonment for one year and to pay a fine of Rs.1 lakh with default rigorous imprisonment for 3 months.

2. Prosecution case in a nutshell is as follows:

On 4.2.2000, the appellant herein was found in possession of 22 packets of Karnataka made arrack, each containing 100 m.l. Prosecution altogether examined 5 witnesses and Exts.P1 to P7 were marked. MO1 series also identified. On the side of the defence, DW1 was examined. After appreciating the evidence, the court below convicted the accused and sentenced as stated above.

3. The main argument advanced by the learned counsel for the appellant is regarding the delay in producing

the alleged contraband before the court. It is submitted before the court that when there is delay, tampering cannot be ruled out.

4. After hearing the learned Public Prosecutor, I perused the records in this case. PWs 1 and 4 are the officials who were present in the detecting party. Even though PWs 1 and 4 were Preventive Officers, the team leader was PW4. PW5 was the Excise Inspector, who registered the crime. As already highlighted, the main aspect raised during the argument is regarding the delay in production of the contraband. Even though PW5 deposed before the court that contraband was produced before the court, on perusal of the property list, it can be seen that it was actually seen produced only on 8.2.2000 by date seal.

5. When the detection was on 4.2.2000, it can be only said that there is a delay of 3 days. Ordinarily a delay of 3 days may not be fatal to the prosecution. But in this case, when the contraband is only 2.2 ltrs of arrack and when the prosecution has not produced the empty covers

before the court, the delay has to be explained to the satisfaction of the court. No satisfactory explanation was given by PW5 in this regard. In this case, it is to be remembered that both the eyewitnesses were turned hostile. Even though the detection was on 4.2.2000, the final charge was filed only on 26.6.2001. The delay in that respect is also not seen explained. It is against the mandate of Section 50 of the Abkari Act. Thus, following the dictum laid down by this court in **Raju v. State of Kerala [2012 KHC 877]** and in **Krishnan H. v. State [2015 1 KHC 822]**, I feel that the appellant is entitled for acquittal on the ground of benefit of doubt. Hence, the appeal is allowed setting aside the conviction and sentence passed by the court below against the appellant. The bail bond stands cancelled.

Sd/-

**K.P. JYOTHINDRANATH, JUDGE**

shg/