

**Anandi,D/O. Sarojini, vs State**

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**SooperKanoon Citation :** [sooperkanoon.com/1742973](http://sooperkanoon.com/1742973)

**Court :** Kerala

**Decided On :** Sep-17-2020

**Judge :** Honourable Mr. Justice B.Sudheendra Kumar

**Appeal No. :** CRL.A/575/2007

**Appellant :** Anandi,D/O. Sarojini,

**Respondent :** STATE

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR THURSDAY, THE 17TH DAY OF SEPTEMBER 2020 / 26TH BHADRA, 1942 AGAINST THE ORDER/JUDGMENT IN SC 482/2004 DATED 17-03-2007 OF ADDITIONAL SESSIONS COURT (ADHOC)-IV, TRIVANDRUM AGAINST THE ORDER/JUDGMENT IN CP 53/2003 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,KATTAKADA APPELLANT/S/ACCUSED: ANANDI,D/O. SAROJINI, NIRMALA BHAVANAM, NIRAPPUVILA MYLADI, PULIYARAKONAM, PANNATHONAM MURI,, VILAPPIL VILLAGE. BY ADV. SRI.D.KISHORE RESPONDENT/S/STATE & COMPLAINANT: 1 STATE REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,,

ERNAKULAM. 2 THE EXCISE INSPECTOR, KATTAKADA EXCISE RANGE, THIRUVANANTHAPURAM. R1 BY PUBLIC PROSECUTOR SMT.V.SREEJA,PP THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17.09.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

The appellant was convicted by the court below under Section 8(2) of the Abkari Act.

2. The prosecution allegation is that on 17.04.2001 at about 2.00 p.m., the appellant was found in possession of 1 litres of arrack, in contravention of the provisions of the Abkari Act.

3. Heard.

4. The learned Counsel for the appellant has

argued that since the sample seal was not affixed on the forwarding note, the tamper-proof despatch of the sample to the laboratory could not be established by the prosecution and consequently, the appellant is entitled to benefit of doubt.

5. In *Prakasan and Another v. State of Kerala* [2016

(1) KLD 311], the Court held thus:

Further in the absence of specimen seal impression of the seal used for sealing the article having been produced in Court and in the absence of producing and marking the forwarding note which is expected to contain the specimen seal impression of the seal used for sealing the sample for the purpose of enabling the chemical examiner to verify and satisfy regarding the genuineness of the sample produced for examination, it cannot be said that the prosecution has proved beyond reasonable doubt that the articles were produced in court in the same condition in

which it was seized and it reached the chemical CrI.A. No.1028 of 2008 3 examiner's lab in a tamper proof condition and the chemical analysis report relates to the representative sample said to have been taken from the large quantity of the contraband article alleged to have been seized from the possession of the accused. If this was not proved to the satisfaction of the Court, then it cannot be said that the prosecution had succeeded in bringing home the complexity of the accused in the commission of the crime and that benefit must be given to the accused.

6. In Sasidharan v. State of Kerala [2007 (1) KLT 720], the Court observed thus: Without the link evidence of actual sampling by the concerned clerk of the court by drawing sample from the can and sending the same in a

sealed packet to the Chemical Examiner with a specimen seal sent separately for tamper proof despatch, the Prosecution cannot be held to have brought home the offence against the appellant.

7. In Ravi v. State of Kerala [2011 (3) KLT 353],

the Division Bench of this Court held that the prosecution in a case under the Abkari Act could succeed only if it is shown that the contraband liquor which was allegedly seized from the accused ultimately reached the hands of the chemical examiner by change of hands in a tamper-proof condition.

8. In Krishnan.H v. State [2015 (1) KHC 822], the court held that the absence of sample seal at the space provided for the same in the copy of the Forwarding Note is sufficient reason for presuming that the sample seal was not provided in the original Forwarding Note.

9. In this case, Ext.P7 is the copy of the forwarding note, which does not contain the facsimile of the seal at the space provided for the same.

10. PW6 was the thondi clerk of the court, who

forwarded the sample to the laboratory. However, PW6 did not state that he affixed seal on the original forwarding note. No evidence was adduced by the

prosecution to show that sample seal was affixed on the original forwarding note. Since no sample seal was affixed on the forwarding note, the tamper-proof despatch of the sample to the laboratory could not be established by the prosecution and consequently, there

cannot be any guarantee that the sample produced before the court and examined in the laboratory was the sample drawn from the contraband seized from the appellant. In the said circumstances, the conviction and sentence passed by the court below on the strength of Ext.P9 chemical analysis report cannot be sustained and consequently, I set aside the same.

In the result, this Criminal Appeal stands allowed, setting aside the conviction and sentence passed by the court below under Section 8(2) of the Abkari Act and the appellant stands acquitted for the said offence. The bail bond of the appellant stands discharged. SD/- B.SUDHEENDRA KUMAR, JUDGE RK/18.09.2020

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