

**Kunjan @ Kunjan Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Nov-27-2014

**Judge :** Honourable Mr. Justice a.Hariprasad

**Appellant :** Kunjan @ Kunjan

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD THURSDAY, THE 27TH DAY OF NOVEMBER 2014 6TH AGRAHAYANA, 1936 CRL.A.No. 651 of 2004 ( )  
----- AGAINST THE

**JUDGMENT**

IN SC4162003 of ADDITIONAL SESSIONS COURT (ADHOC I ), ERNAKULAM DATED 15-03-2004. APPELLANT(S)/ACCUSED:: -----  
KUNJAN @ KUNJU, S/O. KUTTAPPAN, AGED 55 THOTTATHIKUDI HOUSE, ILLITHODU KARA, MALAYATTOOR, NEELISWARAM VILLAGE, ALUVA TALUK. BY ADVS.SRI.V.RAJENDRAN (PERUMBAVOOR) SRI.GEORGE VARGHESE KIZHAKKAMBALAM. RESPONDENT(S)/COMPLAINANT::  
----- STATE OF KERALA, REPRESENTED BY EXCISE INSPECTOR, KALADY RANGE. BY PUBLIC PROSECUTOR SMT.MADHU BEN. THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27-11-2014, THE COURT ON THE SAME DAY DELIVERED THE

FOLLOWING: amk A.HARIPRASAD, J.

----- Crl.Appeal No.651 of 2004  
----- Dated this the 27th day of November, 2014.

## ORDER

Appeal by the accused convicted for an offence under Section 55(g) of the Abkari Act by the trial court on the following allegations : On 28-06-2001 at about 10.30 p.m., the Excise Inspector and his party conducted patrol duty at Malayattoor area. While so, they received an information that the appellant had kept utensils and implements meant for illicit distillation of arrack. On the basis of that information, they proceeded to the house of the appellant and found that he had kept some copper vessels specially designed for the purpose of distillation and also 5 kg of kariyilampatta, a material used for the manufacture of arrack. After completing the formalities, the appellant was arrested and he was produced before the court.

2. Heard the learned counsel for the appellant and learned Public Prosecutor. Crl.Appeal No.651 of 2004 2 3. Learned counsel for the appellant contended that the court below erred in convicting the appellant for an offence under Section 55(g) of the Abkari Act. According to the submissions of learned counsel, the implements alleged to be recovered from the house of the appellant could be used for other purpose like distillation of lemon grass etc. Before considering the legality of the issue, we shall go through the oral evidence.

4. PW1 is the detecting officer. He was the Excise Circle Inspector of Aluva Excise Range. On 28-06-2001, he along with PW2 were engaged in patrol duty. When he reached at Kothamangalam, a person informed him that the appellant had kept implements for distilling illicit arrack. Thereafter, a search memo was prepared and it was sent to the Magistrate having jurisdiction. Then they went to the house of the appellant and found in the corner of a room in his house that a copper pot Crl.Appeal No.651 of 2004 3 having a capacity of about 5 litre was kept. On the bottom of the pot, they found a soldered tube having about 1.5 inches diameter. Another copper tube with threads could also be seen. Besides, he had kept about 5 kg of kariyilampatta. The above bark is mainly used for distillation of illicit arrack.

The material objects are marked as MO's 1 to 3. Thereafter, Ext.P1 mahazar was prepared from the place of detection and the appellant was arrested. Arrest memo is Ext.P2 , which contains the signature of the appellant. Arrest was intimated to wife of the appellant. The accused and the objectionable articles were removed to the Excise Office. Search list is Ext.P4. This witness was extensively cross examined. During the cross examination, it was suggested that the material objects, namely copper vessels and pipes, could be used for distillation of lemon grass. Even though PW1 initially denied the suggestion, later he admitted that it could be used for distillation of lemon grass as well. PW1 Crl.Appeal No.651 of 2004 4 further deposed that the vessels recovered from the house of the appellant was smelling alcohol.

5. PW2 is the Preventive Officer, who accompanied PW1. He also testified in terms with the testimony of PW1. There are minor contradictions in the depositions of PW's 1 and 2. PW2 stated that he did not examine the copper vessels and pipes by smelling. But that does not mean that PW1 failed to examine them. The suggestion put to this witness that it could be used for distillation of lemon grass is denied by him.

6. PW3 is an independent witness who turned hostile. No support is received from his evidence by prosecution.

7. PW4 is the Investigating Officer. There is no serious infirmity brought out in the cross examination of this witness to show that the investigation was faulty.

8. Recitals in Ext.P1 mahazar is amply supported by the testimonies of PW's 1 and 2. On considering the entire evidence, Crl.Appeal No.651 of 2004 5 I find that the search, seizure and detection of the offence was properly done. Evidence adduced in this case clearly establish that the accused kept materials, still, utensil, implement/ apparatus for the purpose of manufacturing liquor. Learned counsel for the appellant contended that the court below did not consider the defence case that the utensils or implements allegedly recovered from the house of the appellant could be used for distillation of lemon grass oil also. However, the court below cannot be blamed for not accepting the contention for want of evidence, except a feeble suggestion in the cross examination. I do not find any material evidence to

find that these articles cannot be used for distilling arrack. Another contention raised by the learned counsel for the appellant is that 5 kg of kariyilampatta recovered from the possession of the accused cannot be taken as a material for illicit distillation. According to his contention, the said article can be used as an CrI.Appeal No.651 of 2004 6 'Ayurvedic Medicine'. It may be true. But there is no positive evidence to support this contention. Accused has no case that he had kept the bark for medicinal preparation. That apart, the presumption under Section 64 of the Act should have been rebutted by the appellant. In the absence of any rebuttal evidence, I find that the conviction of the court below is legal and proper.

9. Learned counsel for the appellant submitted that the appellant had never involved in any case and he had no criminal back ground. Further, he is hailing from the lower strata of society. It is therefore submitted that in the matter of sentence, some leniency may be shown. Reckoning the entire facts and circumstance, I find that the sentence imposed by the court below can be reduced to a considerable extent. In the result, the appeal is partly allowed. Conviction of the appellant under Section 55(g) of the Abkari Act is CrI.Appeal No.651 of 2004 7 confirmed. The sentence imposed by the trial court is reduced. He shall undergo simple imprisonment for a period of three months and pay a fine of Rs.1,00,000/- (Rupees one lakh only). In default of payment of fine, he shall undergo simple imprisonment for a period of three months. He is entitled to get the benefit of set off under Section 428 Cr.P.C. The trial court is directed to take urgent steps to execute the sentence. All pending interlocutory applications will stand dismissed.  
A.HARIPRASAD, JUDGE. amk

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