

(2020) 12 KL CK 0014
In the High Court Of Kerala
Case No : Criminal Appeal No. 2390 Of 2006

Gopinathan Pillai @ Gopi

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 01-12-2020

Acts Referred:

Abkari Act, — Section 8(2)

Citation : (2020) 12 KL CK 0014

Hon'ble Judges : B. Sudheendra Kumar, J

Bench : Single Bench

Advocate : John Britto, C.A. Rajeev, M.K. Pushpalatha

Final Decision : Allowed

Judgement

1. The appellant was convicted and sentenced by the court below under Section 8(2) of the Abkari Act.
2. The prosecution allegation is that on 15.11.1999 at about 10 p.m., the appellant was found in possession of 7 bags of arrack, each bag having a capacity of 180ml each, in contravention of the provisions of the Abakari Act. The total quantity of contraband possessed by the appellant was 1.26 litres of arrack.
3. Heard.
4. The learned counsel for the appellant has argued that since no forwarding note was produced or marked in this case, the appellant is entitled to benefit of doubt.
5. It appears that no forwarding note was produced and marked in this case.
6. In Sasidharan v. State of Kerala [2007 (1) KLT 720], the Court observed thus:
â??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.â??

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. Since no forwarding note was produced and marked, the prosecution could not establish the tamper- proof despatch of the sample to the laboratory.

In the said circumstances, there is no link evidence to show that it was the same sample which was drawn from the contraband seized from the

appellant, which eventually reached the hands of the chemical examiner by change of hands in a tamper-proof condition. Consequently, there is no link

evidence to connect the appellant with the sample analysed in the laboratory. In the said circumstances, the conviction and sentence passed by the

court below on the basis of Ext.P4 certificate of chemical analysis cannot be sustained.

In the result, this criminal appeal stands allowed, setting aside the conviction and sentence passed by the court below and the appellant stands

acquitted. The bail bond of the appellant stands discharged.