

Crl. Appeal No. 835/2014

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

MONDAY, THE 15TH DAY OF SEPTEMBER 2025 / 24TH BHADRA, 1947

CRL.A NO. 835 OF 2014

CRIME NO.10/2011 OF PEERUMEDU EXCISE RANGE OFFICE, IDUKKI
JUDGMENT DATED 14.08.2014 IN SC NO.346 OF 2013 OF IV ADDITIONAL
SESSIONS COURT, THODUPUZHA
CP NO.86 OF 2012 OF JUDICIAL MAGISTRATE OF FIRST CLASS-I , PEERMEDU

APPELLANT/ACCUSED:

RAJAPPAN, AGED 52 YEARS, S/O.VIJAYAN, PANATHOTTATHIL HOUSE,
KANNAMPADY, PUNNAPARA KARA, UPPUTHARA VILLAGE, PEERMADE
TALUK, IDUKKI DISTRICT.

BY ADVS.
SRI.V.R.ARUN
SRI.S.RUSSEL

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12.09.2025, THE
COURT ON 15.09.2025 DELIVERED THE FOLLOWING:

'C.R'**JOHNSON JOHN, J.**-----
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-----Dated this the 15th day of September, 2025**J U D G M E N T**

The appellant, who is the accused in S.C. No. 346 of 2013 on the file of the Additional Sessions Judge-IV, Thodupuzha, is challenging the conviction and sentence imposed on him for the offences punishable under Sections 55(g) and 8(1) r/w 8(2) of the Abkari Act.

2. The prosecution case is that on 25.03.2011, at about 5 p.m., the Excise Inspector and party searched the house and premises of the accused at Kannampady in Peermedu Taluk and from the property adjacent to the house, they recovered 125 litres of wash and utensils for manufacturing arrack and they also recovered 5 litres of arrack in a white can from a pit in the said property.

3. After investigation, final report was filed against the accused for the offences punishable under Sections 55(a) and (i) and 8(1) r/w 8(2) of the Abkari Act.

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4. On appearance of the accused before the trial court, charge was framed for the offences under Sections 55(g) and 8(1) r/w 8(2) of the Abkari Act. When the accused pleaded not guilty to the charge, the prosecution examined PWs 1 to 6 and marked Exhibits P1 to P9 and MOs 1 to 7. No evidence was adduced from the side of the accused.

5. After trial and hearing both sides, the learned Additional Sessions Judge found the accused guilty of the offences under Sections 55(g) and 8(1) r/w 8(2) of the Abkari Act. For the offence under Section 55(g) of the Abkari Act, the accused was sentenced to undergo rigorous imprisonment for 4 years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to undergo simple imprisonment for six months. The accused was also sentenced to undergo rigorous imprisonment for 4 years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to undergo simple imprisonment for 6 months for the offence under Section 8(1) r/w 8(2) of the Abkari Act.

6. Heard Sri. Anto Thomas, the learned counsel representing the learned counsel for the appellant and Sri. Alex M. Thombra, the learned Senior Public Prosecutor.

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7. The learned counsel for the appellant argued that there is violation of Section 53A of the Abkari Act and the prosecution has not adduced any evidence to show that the property from where the contraband item is alleged to be recovered, is in the possession or ownership of the accused and therefore, the impugned judgment is liable to be set aside.

8. PWs 4 and 5 are the independent witnesses examined by the prosecution to prove the occurrence; but, they turned hostile to the prosecution and their evidence shows that they have not witnessed the occurrence.

9. PW2 is the Excise Inspector who detected the offence. The evidence of PW2 and Exhibit P3, search list, shows that no contraband item is recovered from house bearing No.1/192 of Upputhara Grama Panchayat. In cross examination, PW2 deposed as follows:

“പ്രതിയുടെ സ്ഥലത്തിന്റെ വടക്ക് കിഴക്കും ആരുടെ വസ്തു എന്ന് ഇപ്പോൾ ഓർക്കുന്നില്ല. ഞാൻ സംഭവ വസ്തുവിന്റെ രേഖ കണ്ടിട്ടില്ല. പരിസര വാസികൾ സാക്ഷികളില്ല. അവിടെ ഉണ്ടായിരുന്ന കുട്ടികളോട് ചോദിച്ചതാണ് പ്രതിയുടെ വസ്തു എന്ന് ബോധ്യപ്പെട്ടത്. മുതിർന്നവർ പണിക്ക് പോയിരിക്കുകയായിരുന്നു.”

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10. PW3 is the Preventive Officer who accompanied PW2 for the search. The evidence of PW3 also shows that no contraband item is recovered from the house and that the contrabands items are recovered from the property near to the house. In cross examination, PW3 stated as follows:

“പ്രതിയുടെ വസ്തുവിന്റെ അതിർ കൈവശക്കാരെ പറ്റി എനിക്ക് കൃത്യമായി അറിയില്ല. പ്രതിയുടെ വീടിന്റെ മുകൾ ഭാഗത്തു വീട് ഉണ്ട്. ഇത് വടക്ക് ഭാഗത്താണ്. പ്രതിയുടെ വസ്തു റോഡിൽ നിന്നും താഴോട്ട് ചരിഞ്ഞു കിടക്കുന്ന സ്ഥലമാണ്. പ്രതിയുടെ വസ്തുവിൽ jeep മാത്രമേ കൊണ്ട് പോകുവാൻ പറ്റൂ . പ്രതിയുടെ വസ്തുവിന്റെ രേഖകൾ ഞാൻ കണ്ടില്ല.

11. PW6 is the Excise Circle Inspector who conducted the investigation and filed the final report. The evidence of PW6 in cross examination shows that he has not taken any steps to obtain documents relating to the ownership and possession of the property from where the contraband items are alleged to have recovered.

12. In **Ravi C. v. State of Kerala** [2011 (3) KHC 427 = 2011 (3) KLT 627], it was held by this Court that only because an article is found kept or stored in a building or house, the owner or occupier of such building cannot be said to have ‘stored’ the article, nor can it be said that he is in ‘possession’ of such article. In the said decision, it was

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further held that even if the owner or occupier of the house was present in the house at the time of seizure, he cannot be presumed to be in possession of the article or stored the same. In ***Santhosh v. State of Kerala*** [2021 (5) KHC 214 = 2021 KHC OnLine 502], it was held by this Court that unless the person who is said to be in possession of an article is having dominion or control over it, even if he is in physical possession of the same, that possession will not become constructive possession.

13. In this case, none of the prosecution witnesses has a case that they saw the accused handling the contraband items at the time of occurrence and admittedly no contraband item is recovered from house bearing No. 1/192 of Upputhara Grama Panchayat mentioned in Exhibit P5 mahazar. The prosecution has not adduced any evidence as to who is in ownership and possession of the house and who all are residing in the said house. The prosecution has also not produced any document to prove the ownership and possession of the property from where the contraband items are alleged to have recovered.

14. Exhibit P5 mahazar and the evidence of PW2 shows that he has drawn representative samples at the place of occurrence and

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thereafter, destroyed the remaining wash without following the procedure prescribed under Section 53A of the Abkari Act, which reads thus:

“53A. Disposal of seized liquor, intoxicating drugs or articles. - (1) Notwithstanding anything contained in this Act, the State Government may having regard to the nature of the liquor, intoxicating drug, or article, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant consideration, by notification in the official Gazette, specify such liquor, intoxicating drug or article which shall, as soon as may be after their seizure, be disposed of by the authorised officer referred to in section 67B, in such manner as the Government may, from time to time determine after following the procedure hereinafter specified.

(2) Where any such notified liquor, intoxicating drug or, article has been seized under this Act, the authorised officer shall prepare an inventory of such liquor, intoxicating drug or article containing such details relating to their description, quality, quantity, mode of packing, marks, numbers of such other identifying particulars of the liquor, intoxicating drug or article or the packing containers in which they are kept, place of origin and other particulars, as the authorised officer may consider relevant to identify the liquor, intoxicating drug or article in any proceedings under this Act and make an application to any Magistrate having jurisdiction over the area where the seized liquor, intoxicating drug or articles or stored for the purpose of,-

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of such liquor, intoxicating drug or article and certifying such photographs as true; or

(c) allowing to draw representative samples of such liquor, intoxicating drug or article in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2) the Magistrate shall, as soon as may be, visit the place where such liquor, intoxicating drug or articles are stored and take appropriate steps as specified in clauses (a), (b) and (c) of sub-section (2), and allow the application.

(4) Where any liquor or intoxicating drug or article under this Act has been kept under the custody of any court in connection with any offence committed under this Act, before the commencement of the Abkari (Amendment) Act, 2003 or has been brought before a Magistrate without complying the procedure laid down in sub-section (2), the authorised officer shall obtain prior permission of the Court or Magistrate before initiating proceedings under sub-section (2).

(5) Notwithstanding anything contained in the Indian Evidence Act, 1872 (Central Act 1 of 1872) or the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) any Court trying an offence under this Act, shall treat the inventory, the photographs of liquor, intoxicating drug or article and any list of samples drawn under sub sections (2) and (4) and certified by the Magistrate, as primary evidence in respect of such offence.

Explanation. - 'Article' for the purpose of this section includes jaggery and other like substances, the value of which depreciates in passage of time.”

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15. In ***Andikutty v. State of Kerala*** [2023 KHC 777 = ILR 2023 (4) Ker. 1158], this Court held that the mandate of Section 53A has to be complied with in its letter and spirit and if there is violation of Section 53A, the entire prosecution case will vitiate on that ground itself.

In the absence of satisfactory evidence to show that the accused was in ownership or possession of the property from where the contraband items are alleged to have recovered, the appeal is allowed and the conviction and sentence imposed by the trial court against the accused/appellant is hereby set aside and he is acquitted of the offences under Sections 55(g) and 8(1) r/w 8(2) of the Abkari Act. Bail bonds executed by the appellant shall stand cancelled and he is set at liberty forthwith.

sd/-
JOHNSON JOHN,
JUDGE.

Rv