IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

FRIDAY, THE 9TH DAY OF AUGUST 2024 / 18TH SRAVANA, 1946

CRL.A NO. 1235 OF 2007

(AGAINST THE JUDGMENT DATED 30.6.2007 IN SC NO.1842 OF 2001 OF ADDITIONAL SESSIONS COURT.-TRIAL OF ABKARI ACT CASES, NEYYATTINKARA ARISING OUT OF THE ORDER/JUDGMENT IN CP NO.4 OF 2001 OF THE JUDICIAL MAGISTRATE OF FIRST CLASS -II,NEYYATTINKARA)

(CRIME NO.6/98 OF EXCISE RANGE, THIRUPURAM)

APPELLANT/2nd ACCUSED:

G.GOPAN @ GOPAKUMAR,
S/O.JANARDHANA PANICKER, THOPPU PURAYIDOM,
KARODE PANCHAYATH, HOUSE NO.KDP IV-546.

BY ADV BLAZE K.JOSE

RESPONDENT/COMPLAINANT:

THE STATE OF KERALA
REP BY THE EXCISE INSPECTOR,
EXCISE RANGE, THIRUPURAM,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY ADV
SRI.G SUDHEER, PUBLIC PROSECUTOR
ADV.SRI.K M FIROZ, AMICUS CURIAE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09.08.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'C.R'

K.BABU, J.

Criminal Appeal No.1235 of 2007

Dated this the 9th day of August, 2024

JUDGMENT

This appeal essentially challenges the legality of the proceeding of a Sessions Court whereby a witness was arraigned as an accused under Section 319 Cr.PC, solely based on his oral testimony in the Court.

Facts:

2. The Excise Inspector, Excise Range Office, Thirupuram, on 12.03.1998 at or about 6.00 p.m., while conducting patrol duty, received information that illicit arrack was stored at House No.546 in Ward No.IV of Karodu Panchayath in Thiruvananthapuram District by one Babu (Accused No.1). The Excise Inspector proceeded to the place of occurrence and recovered a white jerry can containing illicit arrack at the north-eastern side of a room in the building.

There was nobody in the said house at the time of the search. Babu, a permanent resident of House No.4 Chenkavila of Karodu Panchayath was in possession of the building. On seeing the Excise party, Babu ran away from the house. The Excise Inspector registered a crime alleging offence under Section 58 of the Kerala Abkari Act arraying Babu as the sole accused. After completing the investigation, the Excise Inspector submitted the final report before the jurisdictional Magistrate. The learned Magistrate committed the case to the Sessions Court, Thiruvananthapuram, from where it was made over to the Additional Sessions Court for the trial of Abkari Act Cases, Neyyattinkara. The accused entered appearance. He denied the charge framed against him. The prosecution examined PWs 1 to 10 and proved Exts.P1 to P11, Ext.X1 series and MO1.

3. The Charge Witness No.7 was the appellant herein. The prosecution cited him as a witness as the building was in his ownership as per Ext.P7 certificate issued by the local authority. While giving evidence as PW4, the appellant denied the ownership

of the building. The prosecution later filed an application to recall the appellant. While giving evidence after he was recalled, the appellant admitted that in the earlier examination, he was telling a lie regarding the ownership of the building. He admitted that he was the owner of the building from where illicit arrack was seized. The learned Sessions Judge found that the appellant was responsible to answer for the unauthorised storing of the contraband in the building. The learned Sessions Judge concluded that the appellant appeared to have committed the offence punishable under Section 58 of the Abkari Act. Invoking the provisions of Section 319 Cr.PC, the learned Sessions Judge, arraigned the appellant as accused No.2. The Court framed charge against him, alleging offence punishable under Section 58 of the Abkari Act. He denied the charge. He faced trial along with accused No.1. All the witnesses were re-examined. At the close of the trial, the Sessions Court found the appellant (accused No.2) guilty of the offence under Section 58 of the Abkari Act. The Sessions Court acquitted accused No.1 and convicted accused

No.2/appellant under Section 58 of the Abkari Act and sentenced to undergo rigorous imprisonment for a period of five years and pay a fine of Rs.1 Lakh.

4. I have heard the learned counsel for the appellant, Sri.K.M.Firoz, learned Amicus Curiae and the learned Public Prosecutor.

5. The case of the prosecution is that accused No.1 was found in possession of 35 litres of arrack at House No.546 of Karodu Panchayath. Exhibit P7, a certificate issued from the local authority, shows that the building belonged to the appellant, who was cited as a prosecution witness. Relying on the oral testimony of the appellant in the Court, the learned Sessions Judge implicated him as an accused who had to face trial along with the principal accused.

6. Was the Trial Court justified in arraigning a person examined as a witness as an accused solely based on his oral testimony invoking Section 319 Cr.PC?

7. The learned Amicus Curiae submitted that the Court

should not have invoked Section 319 Cr.PC to implead the appellant as an accused solely based on his oral testimony as a witness. The learned Amicus Curiae submitted that the appellant is entitled to the protection contained in the proviso to Section 132 of the Indian Evidence Act. It is further submitted that as per Article 20 of the Constitution of India, no person accused of any offence shall be compelled to be a witness against himself. The learned Amicus Curiae relied on **Laxmipat Choraria v. State of Maharashtra (1968 KHC 635), Dineshkumar R. @ Deena v. State rep. By Inspector of Police and Others (2015 KHC 4196)** and **Balu v. State of Kerala (2021 KHC OnLine 532)** in support of his contentions.

8. The learned Public Prosecutor submitted that as the appellant was not compelled to answer any question the statement given by him in his examination is to be treated as voluntary, and hence there is no illegality in the procedure adopted by the learned Sessions Judge.

9. Section 319 Cr.PC empowers the Court to proceed against any person not shown or mentioned as accused if it

appears from evidence that such person has committed an offence for which he could be tried together with the main accused against whom an enquiry or trial is being held. The power exercisable under Section 319 Cr.PC is an extraordinary power conferred on the Court to do complete justice. It should be used with caution and only if compelling reasons exist for proceeding against a person against whom action has not been taken.

10. In the present case, initially, the appellant was examined as PW4 to prove that the building from where the arrack was recovered belonged to him. Exhibit P7, a certificate issued from the local authority, was confronted to him wherein the address of the owner of the building was mentioned differently from the address in the summons served on the appellant. He denied the ownership of the building. The prosecution sought permission to put questions which might be put in cross-examination as provided under Section 154 of the Evidence Act. In further examination by the prosecutor, the appellant reiterated his stand that he was not the owner of the building. Later, the

prosecution filed a petition to recall the appellant. He was recalled and examined further. The relevant voter's list was confronted to the witness. He admitted that he was the owner of the building. He added that he was lying before the Court in his previous examination. The learned Sessions Judge found the oral testimony of the appellant to be sufficient to arraign him as an accused, invoking Section 319 Cr.PC.

11. The relevant portion of the order by which the Sessions Court added the appellant as an accused reads thus:

> "In his testimony dated 19.01.2007, he narrated everything admitting that the building of occurrence is in his ownership. He also admitted unequivocally before Court that he had uttered lie before Court earlier, when he was examined, as regards the ownership of the occurrence building, I shall quote the same in the following:
> xxx xxx xxx
> xxx xxx xxx
> On a careful examination of the testimony of PW4 dated 19.01.2007, it will be definitely clear that the occurrence building belongs to PW4, whose name is shown as the owner in Ext.P7. In the course of examination he also had admitted that he is the owner of house No.546 shown in Ext.P7. Thus the deposition before Court by PW4 makes it clear that PW4 is prima facie responsible to answer for the storing of contraband in this case in his building.
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> 2. The learned Public Prosecutor was heard in the matter, who submitted that he is not intending to file petition under Section 319 Cr.PC and the matter was therefore posted for hearing to 31.01.2007. I have heard both sides in the matter.

> 3. The testimony of PW4 as aforesaid prima facie shows that PW4 was the owner of the occurrence building and therefore it appears from the evidence that PW4, not being the accused, has committed the offence under Section 58 of the Abkari Act for which PW4 could be tried together with the accused. According to me, PW4 appears to have committed the offence punishable under Section 58 of the Abkari Act for unauthorisedly keeping possession of the contraband, namely, 35 litres of illicit arrack in the said building. Hence under Section 319 Cr.PC PW4 is made an accused and arrayed as 2nd accused in this case."

12. It is evident from the above extracted order that the learned Sessions Judge solely relied on the oral testimony of the appellant to arraign him as an accused, invoking Section 319 Cr.PC. The learned Amicus Curiae submitted that the appellant was entitled to protection under the proviso to Section 132 of the Evidence Act.

13. Section 132 of the Indian Evidence Act reads thus:

> "**132. Witness not excused from answering on ground that answer will criminate.-** (1) A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:
>
> Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal

> proceeding, except a prosecution for giving false evidence by such answer."

14. In Phipson on Evidence [13th Edition, Page 314, Paragraphs 15-36], the learned author on the privilege comments thus:

> "The privilege is based on the policy of encouraging persons to come forward with evidence in courts of justice, by protecting them, as far as possible, from injury or needless annoyance, in consequence of so doing. A sensible compromise has, however been adopted in several modern statutes by compelling the disclosure, but indemnifying the witness in various respects against its results."

15. The scope of Section 319 Cr.PC was considered by the Apex Court in **Laxmipat Choraria v. State of Maharashtra (1968 KHC 635).** Three accused (brothers) were successfully prosecuted for having committed the offences under Section 120B of IPC and Section 167 of the Sea Customs Act, 1878. They were allegedly part of an international gold smuggling organisation. An Air Hostess by name Ethyl Wong was also a member of the conspiracy. She was examined as a prosecution witness. She narrated the parts played by the accused and her own share in the transaction. Her testimony was that of an accomplice. The following contentions were raised before the Supreme Court:

> Ethyl Wong could not be examined as a witness because (a) no oath could be administered to her as she was an accused person since Section 5 of the Indian Oaths Act bars such a course and (b) it was the duty of the prosecution and /or the Magistrate to have tried Ethyl Wong jointly with the appellants. The breach of the last obligation vitiated the trial and the action was discriminatory.

16. The Apex Court held that the prosecution was not bound to prosecute Wong if they thought that her evidence was necessary to break a smugglers' ring. The Court held that she was protected under Section 132 of the Evidence Act even if she gave evidence incriminating herself.

17. Under Section 118 of the Indian Evidence Act all persons are competent to testify unless the Court considers that they are prevented from understanding the questions put to them for reasons indicated in that section. Under Section 132, a witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any criminal proceeding (among others) upon the ground that the answer to such question will incriminate or may tend directly or indirectly to expose him to a penalty or forfeiture of any kind. The safeguard to this compulsion

is that no such answer that the witness is compelled to give exposes him to any arrest or prosecution or can it be proved against him in any criminal proceeding except a prosecution for giving false evidence by such answer. The protection is further fortified by Article 20(3), which says that no person accused of any offence shall be compelled to be a witness against himself. This article protects a person who is accused of an offence and not those questioned as witnesses. A person who voluntarily answers questions from the witness box waives the privilege which is against being compelled to be a witness against himself, because he is then not a witness against himself but against others. Section 132 of the Indian Evidence Act sufficiently protects him since his testimony does not go against himself {Vide: **Laxmipat Choraria v. State of Maharashtra (1968 KHC 635)**}.

18. The ratio in **Laxmipat** was that once the prosecution chose to examine a person as a witness, he was bound to answer every question put to him. In the process, if the answers given by the witness are self-incriminatory apart from being evidence of the

guilt of the others, he could not be prosecuted on the basis of his deposition in view of the proviso to Section 132 of the Evidence Act.

19. In **Dineshkumar R. @ Deena v. State rep. By Inspector of Police and Others (2015 KHC 4196),** the Supreme Court accepted the proposition in **Laxmipat** that the proviso to Section 132 of the Evidence Act is a necessary corollary to the principle enshrined under Article 20(3) of the Constitution of India, which confers a fundamental right that "no person accused of any offence shall be compelled to be a witness against himself." Though such a fundamental right is available only to a person who is an accused of an offence, the proviso to Section 132 of the Evidence Act creates a statutory immunity in favour of a witness who, in the process of giving evidence in any suit or in any civil or criminal proceeding makes a statement which criminates himself. Without such an immunity, a witness who is giving evidence before a Court to enable the Court to reach a just conclusion (and thus assisting the process of law) would be in a worse position than an accused in a criminal case. In **Dineshkumar** the Apex Court observed thus:

> "46. S.132 existed on the statute book from 1872 i.e. for 78 years prior to the advent of the guarantee under Art.20 of the Constitution of India. As pointed out by Justice Muttusami Ayyar in Gopal Doss (supra), the policy under S.132 appears to be to secure the evidence from whatever sources it is available for doing justice in a case brought before the Court. In the process of securing such evidence, if a witness who is under obligation to state the truth because of the Oath taken by him makes any statement which will criminate or tend to expose such a witness to a "penalty or forfeiture of any kind etc.", the proviso grants immunity to such a witness by declaring that "no such answer given by the witness shall subject him to any arrest or prosecution or be proved against him in any criminal proceeding". We are in complete agreement with the view of Justice Ayyar on the interpretation of S.132 of the Evidence Act.
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> 47. The proviso to S.132 of the Evidence Act is a facet of the rule against self incrimination and the same is statutory immunity against self incrimination which deserves the most liberal construction. Therefore, no prosecution can be launched against the maker of a statement falling within the sweep of S.132 of the Evidence Act on the basis of the "answer" given by a person while deposing as a "witness" before a Court."

20. A witness who enters the dock is under an obligation to state the truth because of the oath taken by him, which qualifies the compulsion in the proviso to Section 132 of the Evidence Act. The position would be different when an accused voluntarily enters the dock, invoking Section 315 Cr.PC and answers questions in which case there is a waiver of the privilege, which is against being compelled to be a witness against himself. In such a situation, he is

not a witness against himself but against the prosecution.

21. In the present case, the foundation of the prosecution against the appellant was based on his testimony as a witness in the box in which he was bound to give answers which appeared to the learned Sessions Judge as incriminating. Therefore, the order passed by the learned Sessions Judge summoning the appellant to face trial was completely without jurisdiction. This illegality goes to the root of the matter, leading to the trial being vitiated.

22. Having faced the trial consequent to the order dated 05.02.2007 (by which he was ordered to be arraigned as an accused) and suffered conviction, is it open to him to challenge the procedure adopted in this appeal? The order arraigning the appellant as accused is not an appealable order. Of course, the order could be challenged in the revision before the Sessions Court or the High Court.

23. The learned Amicus Curiae submitted that the order by which the appellant was arraigned as accused under Section 319 Cr.PC can be challenged in an appeal filed under Section 386

Cr.PC, as it is essentially an appeal from conviction, the foundation of which is the order under Section 319 Cr.PC. The learned Amicus Curiae further submitted that as the foundation for the exercise of the power under Section 319 Cr.PC is without jurisdiction, the trial itself would vitiate.

24. The learned Amicus Curiae relied on **Pragash Mahto and Ors v. State of Bihar (MANU/BH/0456/2005)** in support of his contentions. In **Pragash** the Patna High Court observed thus:

> "40. Mr.Shahi contends that the very summoning of the appellants to face trial being illegal the entire trial has been vitiated. Mr.Prasad, however joins the issue and points out that the appellants faced the trial without any murmur and invited the judgment on merit and having failed to obtain a favourable order, later on, he cannot be permitted to say that the trial has been vitiated. I have given serious thought to the rival submission and I am inclined to take a view that the trial has been vitiated. Foundation for exercise of the jurisdiction under Section 319 of the Code is availability of evidence during the enquiry and trial. This is lacking in the present case and in that view of the matter there is no escape from the conclusion that the order passed by the learned Judge summoning the appellants to face trial was completely without jurisdiction. In my opinion, this defect goes to the root of the matter. Simply because the appellants did not assail the same shall not come to the rescue of the prosecution. I am inclined to take a view that it has vitiated the trial."

25. Therefore, I am of the view that it is open to the appellant to challenge the order under Section 319 Cr.PC in this

appeal and since the very exercise of the jurisdiction under Section 319 Cr.PC is patently illegal, the trial itself would vitiate.

26. It is further submitted that even assuming that the trial in the present case has not been vitiated, the prosecution has miserably failed to establish its case against the appellant.

27. The learned counsel for the appellant challenged the conviction on the following grounds:

(i) The prosecution failed to establish the conscious possession of the contraband by the appellant.

(ii) The prosecution failed to prove that the contraband allegedly recovered from the building eventually reached the Chemical Examiner's Laboratory.

28. The learned Amicus Curiae submitted that the finding of the Sessions Judge to the effect that as the appellant was accused in another case involving the offence under the Abkari Act, a presumption arises that he had the necessary *animus possidendi,* is against the basic principles of criminal jurisprudence. To attract

the penal provision, the prosecution has to establish the possession of the contraband by the appellant. The prosecution could only establish that the building belonged to the appellant. The Investigating Officer gave evidence that immediately before the incident, accused No.1 ran away from the scene of occurrence. The conclusion of the Investigating Officer was that accused No.1 was in possession of the building.

29. While constructing the term "possession" the Supreme Court in **Gunwantlal v. State of M.P (1972 KHC 464)** held thus:

> "'Possession' of an article involves power to control and intent to control. The inevitable factor to be proved by the prosecution to establish 'possession' is, dominion or control over the contraband article by accused. A person may have dominion or control over the contraband article, if he is in actual possession of the article. Even if a person is not in actual or physical custody of a contraband article, it is well settled that prosecution can establish 'possession' if it can successfully prove that accused has control or dominion over such property. Such possession is referred to as 'constructive possession'."

30. In **Santhosh v. State of Kerala [2021 (5) KHC 214]** this Court held thus:

> "26. The accused faces a charge that attracts stringent punishment. A balance, thus, must be struck while constructing the meaning of a word in the statute ('possession' in the present context) that takes in the basic

> ingredient of the offence alleged. The prosecution has to establish "possession of wash" by the accused to bring home the charge against him. Where the offence alleged seeks to deprive the accused of his liberty for a period extending to ten years, a "word" in the definition of the penal provision, that embraces within it the fundamental ingredient of the offence, is to be strictly constructed. Hence the prosecution has to establish the conscious possession of the contraband substance by the accused to attract the offence alleged."

31. The prosecution in the present case failed to establish the conscious possession of the contraband by the appellant.

32. The learned Amicus Curiae, relying on Section 54 of the Evidence Act, challenged the finding of the learned Sessions Judge that the criminal antecedents of the appellant can be a ground to presume *animus possidendi.* As per Section 54 of the Evidence Act, previous bad character is not relevant except in reply. In criminal proceedings, the fact that the accused person has a bad character is irrelevant unless evidence has been given that he has a good character, in which case it becomes relevant. Therefore, the finding of the learned Sessions Judge that the prosecution has established the necessary *animus possidendi* by the appellant cannot be sustained.

33. Yet another aspect that requires consideration is the legality of the procedure in which the property clerk of the Magistrate Court collected sample from the contraband seized and sent for the chemical examination, which formed the basis of Ext.P6 Chemical Analysis Report. Admittedly, the detecting officer had not drawn sample at the scene of occurrence. He produced the contraband before the Court. The property clerk collected the sample from the bottle and forwarded it to the Chemical Examiner. In **Baburaj v. State of Kerala [2021 (6) KLT 416],** this Court considered the legality of this procedure. In **Baburaj** this Court held thus:

> "35. Drawing the sample and sealing the same are acts within the exclusive province of the Police official or the Excise official concerned. The learned Magistrate undertaking the act of taking the sample from the contraband himself is irreconcilable. The water-tight compartments provided for the investigator and the court in a criminal prosecution cannot, at any rate, be allowed to be traversed or interchanged. It is pertinent to note that the detecting officer, after investigation, is to file the final report before the Magistrate. If the Magistrate himself undertakes the act of taking the sample from the contraband produced before him, the question of independent consideration of final report laid by the investigating officer before the learned Magistrate, which is cardinal to criminal jurisprudence, would fail. This finding is fortified by the decision of this Court in Smithesh v. State of Kerala [2019 (2) KLT 974], wherein this Court held that the

> Magistrate has no power or authority to collect samples from the contraband produced before him. In Baby v. State of Kerala [2020 (2) KLT 590], this Court had an occasion to consider whether the Magistrate has the power or authority to direct the investigating officer to draw the sample from the contraband produced before the court for sending to the chemical examiner. This Court held that the learned Magistrate had traversed the jurisdictional limits by issuing orders to take samples from the contraband produced before him for the purpose of sending it to the Chemical Examiner's laboratory.
>
> 36. The course adopted by the learned Magistrate undertaking the act of taking samples through the property clerk is not a procedure established by law. The necessary conclusion is that the Magistrate is not empowered to draw sample from the contraband produced before him by the detecting officer.
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> 37.xxx xxx
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> 42. As the procedure adopted in drawing the sample from the contraband substance has no sanction of law, and the genuineness of the sample forwarded to the Chemical Examiner's laboratory is doubtful, no evidentiary value can be given to Ext.P6, the certificate of chemical analysis. Resultantly, the prosecution failed to establish the link connecting the accused with the contraband."

Resultantly, Ext.P6 Chemical Analysis Report has no evidentiary value.

34. Now, the last issue to be considered is the passing of adverse remarks against the Investigating Officer. The learned Sessions Judge found that the Investigating Officer (PW7) committed dereliction of duty, holding that he had consciously omitted the appellant from the array of the accused while

submitting the final report. Passing of adverse remarks against the Investigating Officer is challenged on two grounds:

(a) The remarks were passed behind his back.

(b) The conclusion of the Investigating Officer that the appellant had no link with the alleged offence is sound.

35. The Investigating Officer, based on relevant materials, concluded that accused No.1 was in the possession of the building and that he ran away from the scene of occurrence on seeing the Excise team. Exhibit P7, a certificate issued by a local authority, was the only material to connect the appellant with the building from where the contraband was seized. Exhibit P7, the ownership certificate, only states that he is the owner of the building. The Investigating Officer concluded from the available material that accused No.1 was in possession of the building. There is nothing to show that the Investigating Officer consciously omitted the appellant from the array of the accused. The finding to the contrary by the learned Sessions Judge is contrary to the facts admitted and

proved.

36. The learned Sessions Judge had not given any opportunity of being heard to the Investigating Officer before passing the adverse remarks.

37. The Supreme Court has repeatedly cautioned that before any castigating remarks are made by the Court against any person, particularly when such remarks could ensue serious consequences on the future career of the person concerned, he should have been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Such an opportunity is the basic requirement, for otherwise, the offending remarks would be in violation of the principles of natural justice. In this case, such an opportunity was not given to the Investigating Officer {Vide: **The State of Uttar Pradesh v. Mohammad Naim (AIR 1964 SC 703) : [1964 (1) CriLJ 549]; Ch. Jage Ram, Inspector of Police v. Hans Raj Midha [1972 (1) SCC 181]: [1972 CriLj 768]; R. K. Lakshmanan v. A. K. Srinivasan [1975 (2) SCC 466] : [1975 CriLj 1545]; Niranjan Patnaik v. Sashibhusan Kar [AIR 1986 SC 819] : [1986**

CriLj 911] and **State of Karnataka v. Registrar General, High Court of Karnataka (AIR 2000 SC 2626)**}.

38. In **State of Bihar v. Lal Krishna Advani [2003 (8) SCC 361]** the Supreme Court observed that strictures cannot be passed against an individual without making him a party and without giving an opportunity of being heard since the right to reputation is an individual's fundamental right.

39. Therefore, I have no hesitation in holding that the learned Sessions Judge ought not to have passed the remarks contained in paragraph 31 of the judgment. The remarks passed against the Investigating Officer (PW7) shall stand quashed.

40. The learned Sessions Judge has committed a grave illegality in recording the impugned conviction and sentence. The appellant is, therefore, found not guilty of the offence punishable under Section 58 of the Abkari Act and is acquitted thereunder. He is set at liberty. The amount, if any, deposited by the appellant as per the direction of this Court shall be disbursed to him as per law.

41. The Criminal Appeal is allowed as above.

Before parting with the matter, this Court places on record its profound appreciation to the learned counsel Sri.K.M.Firoz, for his valuable assistance as Amicus Curiae.

Sd/-
K.BABU,
JUDGE

KAS