

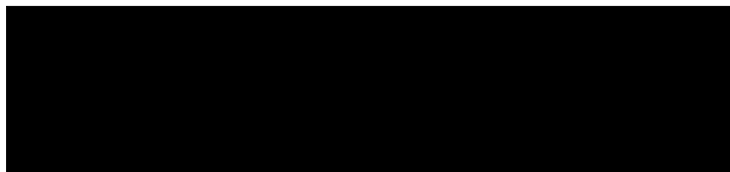


2023/KER/82349

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS  
FRIDAY, THE 22<sup>ND</sup> DAY OF DECEMBER 2023 / 1ST POU SHA, 1945  
CRL.REV.PET NO.73 OF 2014  
AGAINST THE ORDER/JUDGMENT IN CRA 500/2011 OF III ADDITIONAL  
DISTRICT & SESSIONS JUDGE, PALAKKAD  
SC 55/2008 OF ASSISTANT SESSIONS JUDGE (PRINCIPAL), PALAKKAD  
CRIME NO.23/2005 OF KUZHALMANNAM EXCISE RANGE OFFICE, PALAKKAD

**REVISION PETITIONER/2ND APPELLANT/2ND ACCUSED:**

GANGADHARAN



BY ADV SRI.NIREESH MATHEW

**RESPONDENT/RESPONDENT/COMPLAINANT & STATE:**

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

SRI.M.C.ASHI, PUBLIC PROSECUTOR.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD  
ON 08.11.2023, THE COURT ON 22.12.2023 DELIVERED THE FOLLOWING:

**"CR"****O R D E R**

This revision is at the instance of the 2<sup>nd</sup> accused in SC No.55 of 2008 on the file of Assistant Sessions Judge (Principal), Palakkad, assailing the judgment in Crl.Appeal No.500 of 2011 on the file of III Additional District and Sessions Judge, Palakkad, which upheld his conviction and sentence under Section 8(2) of the Abkari Act.

2. The prosecution case is that, on 10.09.2005 at about 6 a.m, PW1-Circle Inspector of Excise, Palakkad Excise Enforcement & Anti Narcotic Special Squad, while conducting patrol duty along with other officials in the Squad, got reliable information that arrack has been stored by the 1<sup>st</sup> accused in House No.V/342 of Peringottukurissi Panchayath. After sending search memo to court, PW1 and party conducted search in that house and found out a 5 litre can full of illicit arrack. That house belonged to the revision petitioner (A2). The 1<sup>st</sup> accused, who is the wife of the revision petitioner (A2), was present in that house at the time of search and seizure, and she was arrested at the spot. After completing the legal formalities like sampling, labelling etc., the 1<sup>st</sup> accused along with the contraband were produced



before the Excise Office, Kuzhalmannam, where crime was registered against both the accused by PW5, Assistant Excise Inspector, who was in charge of the Excise Inspector. CW9, Circle Inspector of Excise, Alathur investigated the case and laid charge against both the accused under Sections 8(1) and 8(2) of the Abkari Act.

3. On appearance of the accused before the trial court, charge was framed under Sections 8(1) and 8(2) of the Abkari Act, to which both of them pleaded not guilty. Thereupon, prosecution examined PWs 1 to 6, marked Exts.P1 to P9 documents and identified M.O.1, to prove its case.

4. On closure of the prosecution evidence, the accused were questioned under Section 313 of Cr.P.C. Both of them denied the incriminating circumstances brought on record, but no defence evidence was adduced from their side.

5. On analysing the facts and evidence and on hearing the rival contentions from either side, the trial court found both the accused guilty under Section 8(2) of the Abkari Act, and each of them were convicted and sentenced to undergo simple imprisonment for six months and fine of Rs.1 lakh with a default sentence of simple



imprisonment for six months.

6. Aggrieved by the conviction and sentence imposed by the trial court, they filed Crl.Appeal No.500 of 2011, and the appellate court, on re-appreciation of the facts and evidence, found that the prosecution failed to prove the guilt of A1 beyond reasonable doubt and so, she was acquitted. But, the conviction and sentence of the revision petitioner (A2) was upheld and the appeal was dismissed as against him. So, he has preferred this revision petition.

7. Now this Court is called upon to verify the legality, propriety and correctness of the conviction and sentence imposed on the revision petitioner by the courts below, under Section 8(2) of the Abkari Act.

8. Heard learned counsel for the revision petitioner as well as learned Public Prosecutor.

9. The grounds on which the revision petitioner is assailing the impugned judgments are manifold. First of all, he is challenging the competence of PW1 to detect the offence. According to him, PW1 was the Circle Inspector of Excise attached to Excise Enforcement and Anti Narcotic Special Squad, Palakkad, and he had no authority to conduct



search and seizure or to arrest the accused.

10. Learned counsel for the revision petitioner relied on the decision **Sujith v. State of Kerala [2016 (3) KHC 823 : 2016 (3) KLT 434]** to substantiate his argument that, when the officers, who detected the offence, were not authorised officers under Section 4 of the Abkari Act, the detection, investigation etc. conducted by them is non est in law and the accused cannot be convicted on the basis of such illegal detection, investigation etc.

11. On going through *Sujith's case* [2016 (3) KHC 823 : 2016 (3) KLT 434] cited supra, we can see that, the facts in that case, are entirely different from the facts in the case on hand. It was a case where the investigation was done by two Deputy Superintendents of Police, one of CBCID, Kottayam and another of Narcotic Cell, Alappuzha. One of them laid charge sheet against the accused. Based on SRO No.321 of 1996, it was found that, the officers who conducted the investigation were not authorised officers, under the Abkari Act, and the investigation conducted and final report laid by them, was non est in law, and so, the accused was liable to be discharged.

12. It is beneficial to extract here paragraphs 6, 7 and 8 of that



judgment which read as follows:

"6. The investigation of a case of this nature can be conducted by an Abkari Officer notified under S.4 of the Abkari Act. Such a Notification had been issued by the Government of Kerala which is SRO No. 321 of 1996. It reads as follows:

"SRO No. 321/96.— In exercise of the powers conferred by S.4 of the Abkari Act, I of 1077 the Government of Kerala hereby appoint all Police Officers of and above the rank of Sub Inspector of Police in charge of Law and Order and working in the General executive branch of the Police Department and all Revenue Officers of and above the rank of Deputy Collectors to be Abkari Officers under their respective Jurisdiction for the purposes of S.31, S.32, S.33, S.34, S.35, S.38, S.40, S.41, S.42, S.43, S.44, S.45, S.46, S.47, S.48, S.49, S.50, S.51, S.52, S.53 and S.59 of the Act and to exercise all the powers and to discharge all the duties conferred and imposed on Abkari Officers, in the sections aforesaid.

This notification shall come into force with immediate effect. (GO (P) No. 69 / 96 / TD dt. 29/03/1996)".

7. As per this Notification, the Government of Kerala appointed all Police Officers of and above the rank of Sub Inspector of Police in charge of law and order and working in the general executive branch of the Police Department and all revenue officers of and above the rank of Deputy Collectors to be Abkari Officers under their respective jurisdiction for the purposes of S.31, S.32, S.33, S.34, S.35, S.38, S.40, S.41, S.42, S.43, S.44, S.45, S.46, S.47, S.48, S.49, S.50, S.51, S.52, S.53 and S.59 of the Abkari Act and to exercise all the powers



and to discharge all the duties conferred and imposed on Abkari Officers in the Sections aforesaid. Therefore, a Police Officer of and above the rank of Sub Inspector of Police in charge of law and order and working in the general executive branch of the Police Department appointed as an Abkari Officer alone can exercise the powers conferred and discharge the duties imposed under the aforesaid Sections of the Abkari Act. There cannot be any dispute and, as a matter of fact, there is no dispute with regard to the fact that the Deputy Superintendent of Police, Narcotic Cell, Alappuzha, was not a Police Officer in charge of law and order and working in the general executive branch of the Police Department. He was an officer in the Narcotic Cell, Alappuzha, at the relevant time empowered with powers and duties connected therewith. It is quite evident from the Final Report filed after further investigation that the investigation was conducted by CW 62, the Deputy Superintendent of Police, Narcotic Cell, Alappuzha, and CW 61, the Deputy Superintendent of Police, CBCID, Kottayam. Just like CW 62, CW 61 was also not in charge of law and order and working in the general executive branch of the Police Department at the relevant time. He was working as the Deputy Superintendent of Police in the Crime Branch CID, Kottayam, at the relevant time. These two officers who conducted further investigation of the case were not in charge of law and order and working in the general executive branch of the Police Department. Therefore, they were not Abkari Officers empowered with powers and duties of investigation as specified in the Notification issued by the Government of Kerala under S.4 of the Abkari Act namely, SRO



No. 321 of 1996.

8. The orders dated 10/11/2000 issued from the Police Headquarters and 01/12/2000 issued by the DIG (Crimes), Thiruvananthapuram, cannot be equated with a Notification issued under S.4 of the Abkari Act by the Government of Kerala. An officer appointed as an Abkari Officer by way of a Notification issued under S.4 of the Abkari Act by the Government of Kerala alone can be an Abkari Officer empowered with the powers of investigation. Such a power which can be exercised by the Government of Kerala under S.4 of the Abkari Act cannot be exercised by the Police Headquarters or the Deputy Inspector General (Crimes) as happened in this case. Here is a case where two Deputy Superintendents of Police, one of CBCID, Kottayam, and another of Narcotic Cell, Alappuzha, both were not in charge of law and order and were not working in the general executive branch of the Police Department, had conducted the investigation and the Deputy Superintendent of Police, Narcotic Cell, Alappuzha, had submitted the Final Report before the Court after such incompetent investigation. No Notification issued by the Government of Kerala under S.4 of the Abkari Act appointing CWs 61 and 62 has been brought to the notice of this Court. There is no dispute also in regard to the fact that the Government alone is empowered under the Abkari Act to issue Notification under S.4 of the Abkari Act appointing competent Abkari Officers for conducting investigation and submitting Final Report before the Court”.





13. SRO No.321 of 1996 was issued by the Government of Kerala, in exercise of the powers conferred by Section 4 of the Abkari Act, for appointment of all Police Officers, of and above the rank of Sub Inspector of Police, in charge of law and order and working in the General Executive Branch of the Police Department and all revenue officers, of and above the rank of Deputy Collectors, to be Abkari officers under their respective jurisdiction for the purposes of Sections 31, 32, 33, 34, 35, 38, 40 to 53 and 59 of the Abkari Act, and to exercise all the powers and to discharge all the duties conferred and imposed on Abkari Officers, in the Sections aforesaid.

14. It is worthwhile to extract here Sections 4(d), (e), (f) and (g) of the Abkari Act which read thus:

"4. The Government may, by notification in the Gazette.-

(a) xxx

(b) xxx

(c) xxx

(d) **May appoint officer to take action under Sections 40 to 53.**- Appoint officers to perform the acts and duties mentioned in Sections 40 to 53 inclusive of this Act;

(e) **And subordinate officers.**- Appoint subordinate officers of such classes and with such designations, powers and duties under this Act as the Government may think fit.



(f) **May appoint any Officer of Government or persons to act as above** .- Order that all or any of the powers and duties assigned to any officer under clauses (d) and (e) of this section shall be exercised and performed by any Officer of Government or any person.

(g) Delegate to any Abkari Officer all or any of their powers under this Act”.

15. In exercise of the powers conferred under Section 4 of the Abkari Act, Government of Kerala issued notification as SRO No.234/67, appointing officers mentioned in column 1 of the Schedule, to exercise the powers and to perform the duties specified in that column, with jurisdiction over the area specified against each in column 2 of the said Schedule. SRO 234/67 is extracted hereunder for easy reference.

GOVERNMENT OF KERALA  
Revenue Department  
NOTIFICATION

G.O.MS. No. 356/67/Rev.

Dated, Trivandrum, 10th August 1967

S.R.O. No. 234/67.-In exercise of the powers conferred by section 4 of the Abkari Act, 1 of 1077 and of all other powers hereunto enabling and in supersession 4 of the previous notification on the subject, Government the Kerala hereby appoint the officers mentioned in the column (1) of the Schedule of to exercise the powers and perform the duties specified in that column with jurisdiction over the areas specified against each in column (2) of the said schedule, namely:-



## SCHEDULE

Officers and their powers and duties	Local Jurisdiction
1. The Commissioner of Excise to be the Commissioner of Abkari Revenue, to exercise all the powers conferred under the Act, to have the control of the administration of the Abkari Department and the control of the Abkari Revenue.	Throughout the Kerala State
2. Deputy Commissioner of Excise to exercise all the powers and to perform all the duties of the Commissioner in respect of the administration of the Abkari Department and the control of Abkari Revenue, concurrently with the Commissioner and subject to the control of the Commissioner.	Throughout the Kerala State
3. Assistant Excise Commissioners to exercise all the powers and to perform all the duties of the Commissioner, concurrently with the Commissioner, and subject to the control of the Commissioner, in respect of-	
(i) issue of permits under sections 6 and 7 of the Act	Within the areas for which they are appointed
(ii) issue of special permits under section 11 of the Act	Throughout the Kerala State
(iii) issue of licenses under sections 12, 13 and 15 of the Act	Within the areas for which they are appointed
(iv) the supervision and management of licensed distilleries, breweries, wineries or other manufacturer or warehouses	Within the areas for which they are appointed
4. Excise Inspectors in charge of Ranges to exercise all the powers and to perform all the duties of the Commissioner in respect of issue of special permits under section 11 of the Act, concurrently with the Commissioner and subject to the control of the Commissioner	Throughout the Kerala State



5. Excise Inspectors in charge of Distilleries, Throughout the Kerala State  
Throughout the 5 Warehouses and Breweries or wineries- to exercise all the powers and to perform all the duties of the Commissioner in respect of issue of special permits under section 11 of the Act for the transport of liquors made in or issued from the Distilleries, Warehouses, Breweries or Wineries of which they are in charge, concurrently with the Commissioner and subject to the control of the Commissioner
6. Licensed Depot keepers of Country Spirits and Toddy to exercise all the powers and to perform all the duties of the Commissioner in respect of issue of special permits under section 11 for the transport of such Spirits or Toddy to the licensed shops in respect of which the depot is licensed, concurrently with the Commissioner and subject to the control of the Commissioner  
Within the area specified in their licence
7. Holders of license in Form DII and DIII for sale of Denatured Spirit/Methylated Spirit/ Methyl alcohol and VRI and VRII for manufacture and sale of Varnish-to exercise all the powers and to perform all the duties of the Commissioner, concurrently with the Commissioner and subject to the control of the Commissioner in respect of issue of special permits under section 11 of the Act for the transport of the said Spirits or Varnish sold by themselves, as provided for in the conditions of the license.  
Throughout the Kerala State
8. **All officers of the Excise Department not below the rank of Excise Inspectors - to perform the acts and duties mentioned in sections 40 to 53 inclusive of the Act**  
Within the areas for which they are appointed
9. The Commissioner of Excise, the Deputy Commissioner of Excise and all Assistant Excise Commissioners to be Abkari Officers under their respective denominations for the purposes of Sections 31, 32, 34, 35, 38, 39, 53, 59, 67 and 67A of the Act and to exercise all the powers and to discharge all the duties conferred and imposed on Abkari Officers in the sections aforesaid  
The Commissioner of Excise and the Deputy Commissioner of Excise throughout the Kerala State and the Assistant Excise Commissioners within the area for which they are appointed



- |  |   |
|--|---|
| 10. Excise Inspectors of the Excise Department to be Abkari Officers under their respective denominations for the purposes of Sections 31, 32, 34, 35, 38, 39, 53 and 59 of the Act and to exercise all the powers and to discharge all the duties conferred and imposed on Abkari Officers in the sections aforesaid  | Within their respective jurisdiction  |
| 11. Excise Inspectors in charge of Distilleries, Warehouses, Breweries, Wineries etc., mentioned in section 14(d)- to be Abkari Officers under their respective denominations for the purposes of sections 31, 32, 34, 35, 38, 39, 53 and 59 of the Act and to exercise all the powers and discharge all the duties conferred and imposed on Abkari Officers in the sections aforesaid | Within the Range in which the distillery, warehouse, brewery, winery etc. is situated |
| 12. Preventive Officers of the Excise Department on duty within the Kerala State to be Abkari Officers under their respective denominations for the purposes of sections 31, 32, 34, 35, 38, 39, 53 and 59 of the Act and to exercise all the powers and to discharge all the duties referred and imposed on Abkari Officers in the sections aforesaid                                 | Within their respective jurisdiction  |
| 13. Excise Guards of the Excise Department on duty within the Kerala State to be Abkari Officers under their respective denominations for the purposes of Sections 34, 35, 38, 39, 53 and 59 of the Act and to exercise all the powers and to discharge all the duties conferred and imposed on Abkari Officers in the sections aforesaid  | Within the areas for which they are appointed   |

Provided that with reference to sections 31 and 34 of the Act there shall be no limit of jurisdiction within the Kerala State for the Abkari and Other Departmental Officers named therein; but all persons arrested and all seizures made thereunder shall, without delay, be made over to the Excise officer possessing local jurisdiction.

By order of the Governor,

K. B. WARRIER,



Home Secretary in-charge.

16. Sl No.8 in column (1) deals with **all officers of the Excise Department not below the rank of Excise Inspectors to perform the acts and duties mentioned in Sections 40 to 53 inclusive of the Act, within the areas for which they are appointed.**

17. In the case on hand, PW1 who detected the offence was Excise Circle Inspector, Excise Enforcement and Anti Narcotic Special Squad, Palakkad. He conducted the search, detected the offence, arrested the 1<sup>st</sup> accused, seized the contraband, took the sample, prepared the seizure mahazar and other documents, and produced the arrested accused along with the contraband and the documents, before the Excise Office, Kuzhalmannam. He was already an Abkari Officer as per Sl.No.8 in SRO No.234/67, which includes all officers of the Excise Department not below the rank of Excise Inspector, unlike the Police Officers and revenue officers mentioned in SRO 321/1996 and discussed in the decision **Sujith v. State of Kerala [2016 (3) KHC 823 : 2016 (3) KLT 434]**. Inclusion of an Abkari Officer in the Special Squad of the Excise Department, to prevent and detect offences under the Abkari Act and the Narcotic Drugs and Psychotropic



Substances Act, cannot and will not take away his authority or competence to act as an Abkari Officer, to perform the acts and duties mentioned in Sections 40 to 53 of the Act, but of course, limited to the functions and duties specifically assigned to the Squad.

18. Section 50 of the Abkari Act contemplates that, the investigation by the Abkari Officer should be completed without unnecessary delay, and as soon as investigation is completed, the Abkari Officer shall forward to the Magistrate empowered to take cognizance of the offence on a police report, a report in accordance with Section 173(2) of the Code of Criminal Procedure. In the present case, investigation was not done by PW1, and he conducted only search, seizure and arrest, for which he is empowered as an Abkari Officer notified under Section 4 of the Abkari Act as per SRO 234/67.

19. In ***Sujith's case*** cited supra, the investigation was done by Police Officers, not in charge of law and order, and not working in the General Executive Branch of the Police Department, and so, the investigation and laying of charge by them were found to be non est in law. So the facts in the case on hand are not similar to the facts in *Sujith's case cited supra*.



20. Learned Public Prosecutor, to show the competence of PW1 to conduct search and seizure, placed reliance on G.O(MS) 15/88/TD dated Trivandrum, 08.02.1988, an order issued from Taxes (F) Department, which reads thus:

GOVERNMENT OF KERALA

ABSTRACT

Excise Department-Special Squads and Mobile Squads -  
Redeployment of the Squads-orders issued.

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TAXES (P) DEPARTMENT

G.O. (MS) 15/88/TD

Dated, Trivandrum 8--2--1988.

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Read:- 1. G.O. (MS) 85/78/TD dt. 28-7-78.  
2. G.O.(MS) 25/83/TD dt. 26-8-83.  
3. G.O. (MS) 12/85/TD dt 8-12-85.  
4. G.O.(MS) 23/85/TD dt. 13-3-85.  
5. G.O. (MS) 93/85/TD dt. 27-7-85  
6. Letters No.XE1-11616/85 dt. 24-6-86 83, 8-1-87 and 4-8-87 from the Secretary (Excise), Board of Revenue, Trivandrum.

ORDER

There are altogether 16 squads in the Excise Department such as 8 Special Squads, 6 Mobile Squads, one Excise Intelligence Bureau at Trivandrum and one Narcotic Intelligence Bureau at Ernakulam. The special squads are functioning directly under the control and supervision of Deputy Commissioner of the respective zones. The six Mobile squads are functioning at Pozhiyoor in Southern Zone, Nedungandam and Chittur in Central Zone Kanhangad, Kalpetta and Nilambur in Northern Zone under the control of the respective Deputy Commissioners. The Excise Intelligence Bureau is now located at Trivandrum and the Narcotic Intelligence Bureau at Ernakulam. The jurisdiction of these squads has not been clearly demarcated. As a result, complaints of harassment have often been voiced against the squads.





It is felt that the present set up is not capable of combating illicit trading, smuggling, the working of unauthorised shops etc. as effectively as desired. This issue was discussed, inter alia, at a meeting of the Officers convened by the Minister (Industries) at Kanakakunnu Palace on 5-5-87. This was followed by a discussion by the Secretary (Taxes) with the Secretary, Board of Revenue and the Joint Excise Commissioner. The matter was also discussed with the Commissioner of Excise. The Board of Revenue have accordingly submitted proposals for the redeployment of the squads.

2. Government have examined the proposals in details and are pleased to issue the following orders for the redeployment of the squads, the Excise Intelligence bureau and the Narcotic Intelligence Bureau:

(1) The existing six Mobile Squads will be converted into Special Squads and then each of the 14 Special Squads so formed will be placed under the direct control of the Asst. Excise Commissioner in each district. The special squads will be redeployed as indicated below.

(1) Special Squad, Trivandrum	Trivandrum
(2) special Squad No.1. Trivandrum	Shifted as special squad to Quilon.
(3) Mobile Squad, Pozhiyoor	Converted into Special Squad and shifted to Alleppey.
(4) special squad, No 11, Kozhikode.	Shifted as special Squad to Pathanamthitta.
(5) Special Squad, Kottayam.	Kottayam
(6) Mobile Squad,. Nedumkantam.	Converted into Special Squad and shifted to Idukki.
(7) Special Squad, Ernakulam.	Ernakulam
(8) Mobile Squad, Chittur.	Converted into Special Squad and shifted to Trichur.
(9) Mobile Squad, Nilambur.	Converted into Special Squad and shifted to Malappuram.
(10) Special Squad, Palghat.	Palghat
(11) Special Squad, Kozhikode	Kozhikode
(12) Mobile Squad, Kalpetta.	Converted into Special Squad and shifted to Wyanad.
13) Special Squad, Cannanore	Cannanore
(14) Mobile Squad, Kanhangad.	Converted into Special Squad and shifted to



Kasargode.

**(ii) The functioning of each special squad will be as follows:**

**(1) They shall function within the division concerned.**

**(2) They shall prevent and detect offences under the Abkari Act and the Narcotic Drugs and Psychotropic substances Act.**

**(3) They shall do patrolling and checking, for prevention and detection of offences under the Abkari Act and other acts on the direction of the Asst. Excise Commissioner of the division concerned or of any superior authority. They shall not go out for checking on their own.**

**(4) They shall enquire into petitions entrusted to them by the Asst. Excise Commissioner or any superior authority.**

**(5) They shall function round the clock. Duties will be distributed on a duty roster with provision for day off.**

(6) A general diary shall be maintained by the squads which shall contain a record of all the work done by the squads. Movement's of the member's, of the squad and any incidents that are reported and action taken thereon shall form part of the general diary contents.

(7) A petition register shall be maintained.

(8) The Asst. Excise Commissioner of the division concerned shall send a monthly report to the Joint Excise Commissioner about the work done by the Squad, also indicating whether targets have been achieved and also the short comings in the performance of the members of the squad observed if any.

**(9) A crime register will be maintained by the squads to indicate the number of crimes detected and the follow up action taken at each of the ranges to which the crime cases have been handed over for investigation.**

(10) The squads shall perform any other tasks assigned to. them by the Asst. Excise Commissioner or any superior authority.

(iii) The Excise Intelligence Bureau, Trivandrum will be converted into a Control room squad known as "Excise Control Room Squad" which will work round the clock.

(iv) The Excise Control Room squad will have the following functions:

(1) The Excise Control Room shall function round the clock with turn duties allotted to the personnel on a duty roster with provision for day off. The Control Room shall be under the charge of an Officer always not below the rank of an Excise Inspector. A general diary shall be maintained in the Control Room to note down all incidents reported to the Control Room, action taken thereon, the movements of personnel and work done.



(2) The Control Room will attend to all calls and complaints received from the Public to prevent and detect offenses under the Abkari Act and the Narcotic Drugs and Psychotropic substances Act.

(3) The Control Room squad shall have jurisdiction only within the city limits and attend to all urgent work by dispatching personnel from the control Room. If they have to move outside the city limits necessary prior permission will be obtained from the Asst. Excise Commissioner or higher authority.

(4) Petitions entrusted to the Control Room by the Asst. Excise Commissioner or higher authority shall also be enquired into.,

(5) The Squad shall perform any other task assigned to it by the Asst. Excise Commissioner or any superior authority,

(V) The Narcotic Intelligence Bureau, Ernakulam will be shifted to Idukki District, and will be redesignated as Narcotic Enforcement Squad. It will be located at Nedumkantam. This squad will be entrusted with the task of destruction of Ganja. As far as possible persons below the age of 35 years alone will be posted to this Squad in view of the arduous nature of work involving climbing of mountain terrain etc.

(VI) The functions of the Narcotic Enforcement squad be as under:-:

(1) To work under the direction of the Asst. Excise commissioner, Idukki or any superior authority and to detect and prevent offenses under the Narcotic Drugs and Psychotropic substances Act and the Abkari Act.

(2) To ensure that ganja cultivation in Idukki district is stamped out.-

(3) To collect intelligence on ganja cultivation and about the persons involved in it with a view to bringing the culprits to book.

(4) To furnish periodical statements to the Board of Revenue, Joint excise Commissioner, the Government of Kerala and Narcotic Commissioner, Government of India in form "7 and in other formats.

(5) To furnish a monthly statement of raids conducted and the number of ganja plants destroyed to the Joint Excise Commissioner and the Board of Revenue (Excise).

(6) To act in liaison with the District Collector, Idukki so as to ensure that as many joint raids are conducted as possible every month.

3. The sanctioned strength of each special squad in the revised set up is as given in the statement appended. The persons to be posted to different squads will be drawn by the Board of Revenue by redeployment of existing personnel so as to ensure that no additional posts are



to be created for the purpose.

(By Order of the Governor),  
C.T. SUKUMARAN,  
SECRETARY TO GOVERNMENT.

21. Learned Public Prosecutor would argue that, as per G.O(MS) 15/88/TD extracted above, existing officers were redeployed to form the Special Squads in all the 14 districts, and they were placed under the direct control of Assistant Excise Commissioner. The duty of the Special Squad is to prevent and detect offences under the Abkari Act and the Narcotics Drugs and Psychotropic Substances Act, and they shall do patrolling and checking, for prevention and detection of offences under the Abkari Act and other Acts, on the direction of the Assistant Excise Commissioner of the division concerned, or of any superior authority. They shall enquire into petitions entrusted to them, by the Assistant Excise Commissioner or any superior authority. In paragraph 2 clause ii(9) of G.O.(MS) 15/88/TD, it is mentioned that, **a crime register will be maintained by the squads to indicate the number of crimes detected and the follow up action taken at each of the ranges to which the crime cases have been**



**handed over for investigation.** So, that clause clearly indicates that the squad detecting an offence under the Abkari Act had no power to investigate, and so they have to hand over the crime cases for investigation to the Range Office concerned.

22. Learned counsel for the revision petitioner would argue that, the order of the Taxes (F) Department issued as GO(MS) 15/88/TD dated 08.02.1988 is not a notification issued under Section 4 of the Abkari Act, and so the members of the Special Squad cannot be treated as Abkari Officers having power to perform the acts and duties under Sections 40 to 53 of the Act.

23. The very purpose of forming the Special Squad was to prevent and detect offences under the Abkari Act and the Narcotic Drugs and Psychotropic Substances Act. The powers and functions of the Squad are detailed in that order, and it was clearly mentioned that the persons to be posted to different squads will be drawn by the Board of Revenue by redeployment of existing personnel, so as to ensure that no additional posts are to be created for the purpose. When an Abkari Officer already notified under Section 4 of the Abkari Act as per SRO 234/67 is redeployed to a Special Squad, he need not



be again notified as an Abkari Officer to perform the duties and functions as a member of the Special Squad, because by such redeployment, he will not lose his authority as an Abkari Officer. But when he is redeployed to the Special Squad, he has to act within the parameters of the duties and functions, assigned to the Squad, and he cannot cross the borders. As we have seen, the Squad can function within the territorial limits of their divisions under the direct control of the Assistant Excise Commissioner of the Division concerned. They can do patrolling, they can prevent and they can detect offences. But, they cannot investigate the crime, for which they have to hand over the same to the concerned Range Office, to take follow up action. So, obviously, the Squad is formed to curb the crimes under the Abkari Act and Narcotic Drugs and Psychotropic Substances Act, in an effective manner, redeploying existing competent officials to the Squad. When the officials redeployed to the Squad are already competent to function as Abkari Officers, there is no need for any further notification, notifying them again as Abkari Officers to function as members of the Squad. Otherwise, the offences detected by the Special Squad, have to be thrown to the trash, defeating the very purpose of formation of



such Squads, to prevent such offences. As we know, Abkari offences and Narcotic and Psychotropic offences are rampant in our society, affecting our younger generation as a whole. With a view to check and prevent commission of such offences, Excise Special Squads were formed specifically assigning their functions and duties. Subsequently, as per Government Order No.GO(MS) 109/94/TD dated 03.09.1994, the Excise Special Squads were entrusted with enforcement activities in the District concerned, in addition to the enforcement work being carried out by Excise Range and Circle Offices in their respective jurisdiction. By that order, the Excise Special Squads were converted and re-named as Excise Enforcement and Anti Narcotic Special Squad.

24. G.O (MS) 109/94/TD dated 03.09.1994 reads thus:

GOVERNMENT OF KERALA

ABSTRACT

Excise Department - Excise Special Squads - Conversion as Excise Enforcement and Anti- Narcotic special squads - orders - Issued.

=X=  
TAXES (F) DEPARTMENT

G.O.(MS) 109/94/TD. Dated, Thiruvananthapuram, 3.9.1994  
=X=  
Read : Letter No.XE1-14736/94 dated 9-8-94 from Secretary,



Board of Revenue (Excise), Thiruvananthapuram.

O R D E R

At present, the Excise Special Squads functioning under the Assistant Excise Commissioners in each District are entrusted with enforcement activities in the Districts concerned in addition to the enforcement work being carried out by Excise Range and Circle Offices in their respective jurisdictions. Government consider that the working of the Excise Special Squads can be made more effective as a special enforcement agency over and above the Range and Circle Offices of these squads are detached from the Control of the District machinery and brought under the direct administrative control of the Zonal Deputy Commissioners of Excise. It has been pointed out that if the Excise Special Squads are renamed or converted to function as special Narcotic cells, in addition to its existing functions, it will be possible for Government to move the Narcotic control Bureau for its assistance.

(2) With a view to achieve the objectives outlined above, it has been suggested that.

- i) The present excise special squads may be converted, and renamed as Excise enforcement and Anti Narcotic special Squads.
- ii) The Excise Enforcement and Anti Narcotic special squads so formed may function under the direct administrative control of three Dy. Excise Commissioners in charge of three Excise Zones.

(3) Government have examined the above proposals in detail and are pleased to accept the above suggestions and





they order that the present Excise Special Squads functioning under the Asst. Excise Commissioners in each district will be converted as Excise Enforcement and Anti Narcotic special squads. The Excise Enforcement and Anti narcotic special squads will function under the direct administrative control of the three zonal Dy. Commissioners of Excise, Thiruvananthapuram, Ernakulam and Kozhikode.

(4) The Secretary, Board of Revenue (Excise), Thiruvananthapuram will take immediate further action in the matter.

By Order of the Governor,  
N. M. Samuel  
Special Secretary to Government

25. Learned Public Prosecutor would say that, PW1 is an Abkari Officer, as per notification G.O (MS) No.356/67/Rev. Dated, Trivandrum, 10.08.1967 (SRO No.234/67). So, there was no need for any further notification declaring him as an Abkari Officer to perform the duties of an Abkari Officer as mentioned in Sections 40 to 53 of the Abkari Act. As per G.O (MS) 15/88/TD dated 08.02.1988, Special Squads were formed for the 14 Districts assigning specific functions to prevent and detect offences under the Abkari Act and Narcotic Drugs and Psychotropic Substances Act. As per G.O (MS) 109/94/TD dated 03.09.1994, Excise Special Squads were re-named as Excise



Enforcement and Anti Narcotic Special Squads.

26. In the case on hand, PW1 detected the offence, and entrusted the accused arrested from the spot, along with the articles seized and documents prepared, to the Excise Range Office, Kuzhalmannam and investigation was taken over by Excise Circle Inspector, Alathur. The investigation was done by an authorised Abkari Officer and not by any Police Officers who were not authorised officers under the Abkari Act, as in ***Sujith's case*** cited supra.

27. Learned counsel for the revision petitioner relied on the decision **Sunil kumar v. State of Kerala** [Neutral citation No.2023:KER:63855] in which ***Sujith's case*** cited supra was followed. In ***Sunil Kumar's*** case also, the investigation was done by an officer who was not an authorised officer under the Abkari Act and so, that decision also is not applicable to the case on hand. So, in any view of the matter, the detection, seizure, arrest etc. done by PW1 will not be vitiated, as he is an Abkari Officer notified under Section 4 of the Abkari Act, as per SRO No.234/67, though he was redeployed to the Special Squad. So, the incompetency of PW1 to detect the offence pleaded by the revision petitioner is liable to be rejected.



28. Now coming to the facts of the case, learned counsel for the revision petitioner would contend that, there were serious anomalies in the prosecution case to discredit its genuineness. As per Ext.P1 search memo, the information received was that, the 1<sup>st</sup> accused Indira was keeping arrack at her house. So, after sending search memo, they proceeded to her house and on search, 5 litres of arrack was found in a can kept in her house. So, she was arrested at the spot. Though the trial court convicted her under Section 8(2) of the Abkari Act, the appellate court acquitted her. No revision has been preferred by the complainant/State against the acquittal of the 1<sup>st</sup> accused.

29. The prosecution records will show that, the 2<sup>nd</sup> accused was not at the scene at the time of search or seizure, and he was never arrested by the Excise Officials. He was made an accused only because of the fact that the house where the search was conducted was in his name. Ext.P8 is the ownership certificate of the building No.V/342 (old No.V/322). Ext.P9 is the extract of the building tax assessment register and it also shows that, building No.V/322 belonged to Sri.Gangadharan, S/o.Lakshmanan, who is the revision petitioner herein. No evidence whatsoever has been adduced by the



prosecution to show the involvement of the revision petitioner in the offence alleged, except the fact that the building from where the contraband was seized, was in his name. Prosecution has no case that, the revision petitioner was ordinarily residing in that house. If at all he was residing there, unless and until prosecution is able to prove that he was in conscious possession of the contraband, he cannot be held liable for the contraband seized from that house. 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 [See **Santhosh v. State of Kerala** 2021 (5) KHC 214]. Merely 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. 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 he had stored the same. [See **Ravi C v. State of Kerala 2011 (3) KHC 427**].

30. In the case on hand, the revision petitioner (A2) was not



present in that house at the time of search and seizure. There is nothing to show that, with his knowledge and consent, the contraband was kept in that house. There is no evidence to show that, he had dominion or control over the contraband seized or to show that he was in conscious possession of the same. The fact that the revision petitioner could not be arrested by the excise officials, at any time before filing the charge sheet, casts a doubt regarding the ordinary residence of the revision petitioner in that house. If he was ordinarily residing there, there was no reason for the excise officials for not arresting him for about two years, till the filing of the charge sheet. The independent witnesses cited by the prosecution, turned hostile. If the revision petitioner was arrested during investigation, he could have been shown to the independent witnesses for the purpose of identification. But, that was not done as he was not arrested.

31. The revision petitioner surrendered before court on 11.12.2007 after filing the charge sheet, and after taking cognizance of the offence, probably on getting summons from the court. So, none of the witnesses including the official witnesses could get a chance to identify him. The official witnesses have no case that, they had



previous acquaintance with him. Except the fact that the name of the revision petitioner was found in Exts.P8 and P9 documents showing ownership of the building from where the contraband was seized, there is nothing to connect him with the contraband. PW1 got information that the 1<sup>st</sup> accused was keeping the contraband in her house and she was arrested along with the contraband and she was convicted and sentenced, but later she was acquitted by the appellate court. For that reason also, there is nothing to connect the revision petitioner with the contraband seized.

32. Though the search list was seen produced before court as Ext.P3, no property list is there, to show when the contraband and its sample were produced before court. Ext.P3 search list will show the contraband seized in a 5 litre can, and it will not show the sample taken out of it. Ext.P4 seizure mahazar will show that, 300ML of arrack was taken as sample in a 375ML bottle. Since the property list is not seen produced or marked, we will not get the date and time, of its production before the court, and it amounts to a serious lapse from the part of the prosecution.

33. The investigating officer-CW9 was not examined, and it



seems that he was given up by the prosecution. Learned counsel for the revision petitioner would say that, non-examination of the investigating officer has caused serious prejudice to the revision petitioner. Prosecution has not shown any satisfactory explanation for non-examination of the investigating officer, and according to the revision petitioner, he lost his valuable opportunity to confront him with the material defects in the prosecution case, and also to confront him with the identity of the revision petitioner, as he was not arrested. So, his case that, non-examination of the investigating officer caused prejudice to him is liable to be accepted.

34. Though the occurrence was on 10.09.2005, the investigation was completed and charge sheet was laid only on 28.09.2007, with a delay of two years. Section 50 of the Abkari Act says that, every investigation into the offences under the Act shall be completed without unnecessary delay. No explanation whatsoever has been offered by the prosecution, for the delay of two years in completing the investigation, and filing the final report. The unexplained delay in completing the investigation, and filing the final report is no doubt fatal to the prosecution. [See **Moothedath Sivadasan v. State of**



**Kerala** 2021 (1) KLT 744, **Kumaran P. v. State of Kerala and another** 2016 (4) KLT 718].

35. The trial court as well as the appellate court convicted and sentenced the revision petitioner under Section 8(2) of the Abkari Act, without noticing the vital defects discussed above, which certainly affects the credibility of the prosecution case. So, the impugned judgments of conviction and sentence are liable to be interfered with.

In the result, the conviction and sentence of the revision petitioner under Section 8(2) of the Abkari Act by the courts below, are hereby set aside. He is found not guilty of the offence alleged and he is acquitted under Section 235(1) of Cr.P.C. His bail bond is cancelled and he is set at liberty forthwith.

The revision petition accordingly stands allowed.

Sd/-

**SOPHY THOMAS**  
**JUDGE**

smp