**Ramachandran vs State of Kerala**

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**SooperKanoon Citation** : sooperkanoon.com/1278754

**Court** : Kerala

**Decided On :** Mar-28-2025

**Judge** : Honourable Mr.Justice K. V. Jayakumar

**Appeal No.** : Crl.Rev.Pet/651/2013

**Appellant** : Ramachandran

**Respondent** : State of Kerala

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR FRIDAY, THE 28TH DAY OF MARCH 2025 / 7TH CHAITHRA, 1947 CRL.REV.PET NO. 651 OF 2013 AGAINST THE JUDGMENT DATED 18.12.2012 IN Crl.A NO.812 OF 2003 OF ADDITIONAL DISTRICT COURT (ADHOC)-III, THALASSERY ARISING OUT OF THE JUDGMENT DATED 10.11.2003 IN CC NO.713 OF 1998 OF JUDICIAL MAGISTRATE OF FIRST CLASS, MATTANNUR REVISION PETITIONER/APPELLANT/2ND ACCUSED: RAMACHANDRAN, AGED 56 YEARS S/O.KUNHIRAMAN NAIR, KANDUMKUNNU AMSOM, KANDUMKUNNU, KANNUR DISTRICT. BY ADVS. SRI.C.P.PEETHAMBARAN SMT.MINI.V.A.

RESPONDENT/COMPLAINANT: STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031 OTHER PRESENT: Sri. Ranjit George-PP THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## ORDER

This criminal revision petition is preferred impugning the

**judgment of the learned Additional Sessions Court, Adhoc-III, Thalassery in**

Crl.A.No.812/2003.

2. The revision petitioner herein is the 2nd accused in Crime No.294/1996 of Iritty Police Station registered for offence punishable under Sections 55(a) and 65 of the Abkari Act.

3. The prosecution case is that, on 12.09.1996, accused

nos.1 to 3 were found transporting illicit liquor, without permit or any sufficient documents. The 1st accused is the driver of the lorry bearing registration no.KBT 4117, 2nd accused is the cleaner and the 3rd accused is the owner of the lorry.

4. The trial court convicted and sentenced the 2 nd accused

to undergo rigorous imprisonment for six months and to pay a fine of Rs.25,000/-. It is further directed that, in default of payment of fine, the accused shall undergo simple imprisonment for three months. The accused nos.1 and 3 were absconded and the case against them was split up.

5. The appellate court confirmed the sentence and conviction imposed by the trial court.

6. Impugning the judgment of the learned Additional Sessions Judge, Thalassery, the accused preferred this revision.

7. Before the trial court, PWs.1 to 7 were examined, Exts.P1

to P5 were marked. PW1 is the Sub Inspector, PWs. 2 and 3 are the mahazar witnesses. PW4 is a witness to the scene mahazar. PW5 is the Circle Inspector who detected the crime on the alleged date of occurrence. DW1 prepared the seizure mahazar. After the closure of the prosecution evidence, the accused was questioned under Section 313(1)(b) of the Code of Criminal Procedure.

8. I have heard Adv. Renjit George, learned Public Prosecutor and the learned counsel appearing for the revision petitioner.

9. The learned Public Prosecutor submitted that the

impugned judgment is legally sustainable and no interference, whatsoever, is warranted in this matter. He further submitted that the prosecution has succeeded in alleging and proving the charge against the revision petitioner.

10. Per contra, the learned counsel for the revision

petitioner submitted that the impugned judgment is illegal, irregular and improper. Both the trial court and the appellate court had failed to note the illegalities and improprieties in this case.

11. The learned counsel further submitted that the

prosecution has failed to allege and prove the charge against the accused beyond reasonable doubt. He submitted that the penal statutes are to be interpreted strictly within the four corners of the statute. Suspicion, however strong it may be, it would not be a substitute for proof. The impugned judgment is based on surmises and conjectures.

12. Before further discussion, it may be fruitful to extract the relevant sections: Section 55. For illegal import, etc. - Whoever in contravention of this Act or of any rule or order made under this Act

(a) imports, exports, [transports, transits or possesses] liquor or any intoxicating drug; or

(b) Manufactures liquor or any intoxicating drug;

(c) xxx

(d) taps or causes to be tapped] any toddy- producing tree, or

(e) draws or causes to be drawn] toddy from any tree; or

(f) constructs or works any [distillery, brewery, winery or other manufactory in which liquor is manufactured; or

(g) uses, keeps, or has in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing liquor other than toddy or any intoxicating drug; or

(h) bottles any liquor for purposes of sale; or

(i) Sells or stores for sales liquor] or any intoxicating drug; shall be punished.- Section 65: What things liable to confiscation. - In any case in which an offence has been committed under this Act,

the liquor, drug, materials, still, utensil, implement or apparatus in respect [or by means] of which an offence has been committed shall be liable to confiscation.

> Any liquor or intoxicating drug lawfully imported, exported, transported, manufactured had in possession or sold or toddy lawfully drawn or tapped along with, or in addition to any liquor, intoxicating drug or toddy, liable to confiscation under this section, and the receptacles, packages and coverings in which any such liquor, intoxicating drug, materials, still, utensil, implement or apparatus as aforesaid is or are found, and the other contents, if any, of the receptacles or packages in which the same is or are found, and the animals, carts, vessels or other conveyances used in carrying the same, shall likewise be liable to confiscation.

13. I have heard the rival submission of the counsel for the parties and perused the records.

14. Admittedly, the main contention of the learned counsel

for the revision petitioner is that, the forwarding note was not prepared and marked by the prosecution. The learned counsel for the revision petitioner would further submit that the prosecution has failed to prove the case beyond reasonable doubt and the accused is entitled to get the benefit of doubt.

15. In a decision reported in Unnikrishnan Nair v. State

of Kerala [2020(4) KLT 376], it is held that, in the absence of the forwarding note admitted in evidence, it cannot be found that the prosecution has proved beyond reasonable doubt that the very same sample taken at the spot of the occurrence had reached the chemical examiner for analysis in a tamper proof condition.

16. In the instant case, admittedly, forwarding note was not produced and marked in evidence.

17. In the absence of the forwarding note admitted in

evidence, it cannot be found that the prosecution has proved beyond reasonable doubt that the very same sample taken at the spot for occurrence had reached the chemical examiner for analysis in a tamper proof condition.

18. In the decision reported in Prakasan and Another v.

State of Kerala [2016 KHC 96], this Court observed that, if the forwarding note is not produced and marked, it cannot be said that prosecution has proved beyond reasonable doubt that the articles were produced in Court in the same condition in which it was seized and it reached the chemical examiners lab in a tamper proof condition and the chemical analysis report relates to the representative sample said to have been taken from the large quantity of contraband article alleged to have been seized from the possession of the accused. Paragraph 11 of the above

**judgment reads thus:**

11. Merely because seizure was effected alone is not sufficient to convict the accused for the offence alleged. It must be further proved by the prosecution that the articles seized had reached the Court in tamper proof condition and the prosecution

has to further prove that the chemical analysis report relates to the sample said to have been taken from the contraband article alleged to have been seized from the possession of the accused. In this case the specimen impression of the seal used for sealing the sample has not been produced. PW 3 had stated that he had used metal seal for sealing the sample and he did not remember the letters in that seal. Further he had no case that he had handed over specimen impression of the seal used for sealing the article to any one. He had further stated that he did not know what happened to the articles after he had entrusted the same to Alathoor Excise Range. According to DW 4, PW 3 had affixed the seal of the Circle Inspector and he did not know what was written in that seal. Further neither in the seizure mahazar nor in the search list, the nature of seal used was mentioned as well. Quite unfortunately forwarding note was not seen produced or marked in this case. Without forwarding note on file, it is not possible to ascertain as to whether the specimen seal impression of the seal used for sealing the sample has been provided to Court or the chemical examiner to satisfy the genuineness of the sample produced. Further it will be seen from the property list produced, though not marked, that they were produced on 10/04/1998 before the magistrate who was in charge of the jurisdictional magistrate and it was directed to be kept in the custody of the excise official with a direction to produce the same on 15/04/1998 before the concerned Court. But it is seen from the property list that it was produced before the Judicial First Class Magistrate Court - I, Palakkad, as he was in charge of Judicial First Class Magistrate Court, Alathoor, on that day. It is seen from the property list 'not marked' that though there was a direction to produce the article on 15/04/1998, it was not seen produced on that day and the magistrate had issued a memo to the Excise Inspector to produce the same, by order dated 16/04/1998 and it is seen that on 17/04/1998 with a new property list, they produced same cannases not produced the entire articles in the same condition it was produced as per the earlier property list, at the time when it was produced on 17/04/1998, the cannases were empty. No permission was obtained from the Court for destruction of the articles. But it is seen from Ext. P8 that he had got ratification from the Assistant Excise Commissioner for destroying the toddy. Though it was done as per R.8 of the Kerala Abkari Disposal of Confiscation Articles Rule, 1996 and a reading of that Rule will go to show that, it will be applicable only in cases where confiscation has been ordered by the authority. So under the circumstances, it cannot be said that there was no possibility for tampering the articles before the same was produced in Court, though the same was produced earlier on 10/04/1998 before the magistrate who was in charge of the jurisdictional magistrate at that time with the direction to produce the same on 15/04/1998, but it was not produced on that day. Later it was produced on getting a memo from the concerned Court, that too after destroying the toddy said to have been seized from the vehicle without orders of the Court. Further in the absence of specimen seal impression of the seal used for sealing the article having been produced in Court and in the absence of producing and marking the forwarding note which is expected to contain the specimen seal impression of the seal used for sealing the sample for the purpose of enabling the chemical examiner to verify and satisfy regarding the genuineness of the sample produced for examination, it cannot be said that the prosecution has proved beyond reasonable doubt that the articles were produced in Court in the same condition in which it was seized and it reached the chemical examiner's lab in a tamper proof condition and the chemical analysis report relates to the representative sample said to have been taken from the large quantity of contraband article alleged to have been seized from the possession of the accused. If this was not proved to the satisfaction of the Court, then it cannot be said that the prosecution had succeeded in bringing home the complexity of the accused in the commission of the crime and that benefit must be given to the accused. This was so held in the decision reported in Sasidharan v. State of Kerala [2007 KHC 3404: 2007 (1) KLT 720], Joseph v. State of Kerala [2009 (4) KHC 537: 2009 (2) KLD 915: 2010 (1) KLT SN 18] and Majeedkutty v. The Excise Inspector, Kollam Range [2015 (1) KHC 424: 2015 (1) KLD 262 : 2015 (1) KLT 624]. These aspects were not properly considered by the Court below before coming to the conclusion that the prosecution has proved the case against the accused beyond reasonable doubt and

consequential conviction entered is unsustainable in law and the same is liable to be set aside.

19. Upon hearing the submission of the counsel and perused

the records, I am of the view that the prosecution has failed to prove the case beyond reasonable doubt. The impugned judgment is liable to be set aside, in my view. In the light of the above discussion, I am of the considered opinion that the impugned judgment is liable to be set aside. Both the trial court and the appellate court overlooked serious illegalities which cut the very root of the prosecution story. In the result,

(i) Criminal revision petition is allowed.

(ii) The impugned judgment is set aside.

(iii) The revision petitioner/2nd accused is acquitted and he is set at liberty.

(iv) The bail bond, if any, executed by the revision petitioner stands cancelled.

(v) Fine, if any, paid by him shall be refunded. Sd/- K. V. JAYAKUMAR JUDGE Sbna/