

**A.Ravi vs the State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1279307](http://sooperkanoon.com/1279307)

**Court :** Kerala

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

**Judge :** Honourable Mr.Justice Muralee Krishna S.

**Appeal No. :** Crl.Rev.Pet/2256/2014

**Appellant :** A.RAVI

**Respondent :** The State of Kerala

**Judgement :**

CRL.REV.PET NO. 2256 OF 2014 1 2025:KER:26668

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MURALEE KRISHNA S.  
FRIDAY, THE 28TH DAY OF MARCH 2025 / 7TH CHAITHRA, 1947  
CRL.REV.PET NO. 2256 OF 2014 SC NO.369 OF 2009 OF ASSISTANT  
SESSIONS COURT, HOSDURG CRL.APPEAL 189 OF 2013 OF THE  
ADDITIONAL SESSIONS COURT-I, KASARAGOD.

REVISION PETITIONER/APPELLANT/ACCUSED: A.RAVI, AGED 33  
YEARS, S/O.LATE AMBUNHI, RESIDING AT MEETHALE PURAYIL  
HOUSE, AZHAKULAM, KALICHAMPOTHI, MADIKAI P.O., HOSDURG  
TALUK, KASARAGODE DISTRICT. BY ADVS. SRI.JAWAHAR JOSE

SRI.ARUN

AJAY

SHANKAR

RESPONDENT/RESPONDENT/COMPLAINANT & STATE: THE STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031. SMT.SEETHA S., PUBLIC PROSECUTOR THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19.02.2025, THE COURT ON 28.03.2025 DELIVERED THE FOLLOWING: CRL.REV.PET NO. 2256 OF 2014 2 2025:KER:26668

## **ORDER**

By the judgment dated 25.11.2013 in S.C.No.369 of 2009 on the file of the Assistant Sessions Judge, Hosdurg, the Revision Petitioner was convicted and sentenced to undergo Rigorous Imprisonment for two years and to pay fine of Rs.1,00,000/-, and in default of payment of fine to undergo rigorous imprisonment for Six months for the offence under Section 8(2) of the Abkari Act.

2. The appeal filed by the petitioner was allowed in part by

confirming the conviction, but modifying the substantive sentence as rigorous imprisonment for one year, as per the judgment dated 10.10.2014 of the Additional Sessions Court-I, Kasaragod in Crl.Appeal No.189 of 2013. The fine and default sentence were maintained by the Appellate Court. Being aggrieved, the petitioner is now before this Court with the revision petition filed under Section 397 read with Section 401 of the Code of Criminal Procedure (Cr.P.C. for short). For convenience, the parties are referred to in this order in their status as they were before the trial court, unless otherwise stated.

3. The prosecution case is that on 15.12.2007 at about 6.30 a.m., while PW1, the preventive officer and party, attached to Excise Enforcement and Anti-Narcotic Special Squad, Kasaragod, were CRL.REV.PET NO. 2256 OF 2014 3 2025:KER:26668

conducting routine patrolling, they found the accused by the side of the road leading to the house of one Kumaran bearing Door No.XIII/239, by holding a 5-litre Can. On search, the exercise party found arrack in the Can. The accused was arrested, and the contraband article was seized from the place of occurrence. After complying with the legal formalities, such as drawing of samples, etc., the accused was brought to the Excise Range Office. The crime was registered by PW5, another preventive officer, who was holding the charge of the Excise Inspector. The accused was produced before the jurisdictional court and remanded in judicial custody. The remaining property was produced before the authorised officer for pre-trial disposal. On completion of the investigation, PW6 the Excise Inspector of the Range concerned laid the final report before the Judicial First Class Magistrate-II, Hosdurg.

4. On receipt of the final report, the learned Magistrate took

cognizance of the offence and committed the case to the Sessions Division under Section 209 of Cr. P.C., after supplying the copies of relevant prosecution records to the accused as provided under Section 207 of Cr.P.C. On receipt of the records, the learned Sessions Judge made over the case to the Assistant Sessions Court, Hosdurg for trial and disposal.

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5. From the side of the prosecution, PWs 1 to 6 were

examined, and Exts.P1 to P12 documents were marked. On completion of the prosecution evidence, the accused was examined under Section 313 of Cr.P.C. and he denied all the incriminating circumstances brought out in the prosecution evidence. Having found the case as unfit for acquittal under Section 232 of Cr.P.C, the learned Assistant Sessions Judge posted the case for defence evidence. DW1 was examined from

the side of the accused. After hearing both sides, the accused was convicted and sentenced by the trial court as said above.

6. Heard the learned counsel for the petitioner/accused and the learned Public Prosecutor.

7. The learned counsel for the petitioner/accused argued

that the crime was registered by PW5 the preventive officer who was holding the charge of the Excise Inspector, and hence the registration of the crime is bad, being not done by an Abkari officer. The learned counsel further argued that there is huge delay in the investigation, which is fatal to the prosecution.

8. On the other hand, the learned Public Prosecutor argued that the evidence of prosecution witnesses convincingly prove the CRL.REV.PET NO. 2256 OF 2014 5 2025:KER:26668 guilt of the accused and hence no interference is warranted to the impugned judgment of the appellate court.

9. The registration of the crime in this case is done by PW5,

a preventive officer. But as evident from Ext.P4 crime and occurrence report, he was holding the charge of the Excise Inspector. In such circumstances, I find no merits in the argument of the learned counsel for the accused that PW5 had no authority to register the crime.

10. But, while going through Ext.P5 property list produced

before the trial court, I find serious laches in the preparation of that document, which is fatal to the prosecution. A learned Single Judge of this Court in Anil Varghese v. State of Kerala [2024 (6) KHC 490] considered the effect of absence of specimen seal in the seizure mahazar as well as in the property list and held thus: It is well settled that the specimen of the seal used is required to be affixed in the contemporaneous mahazar, property list and in the forwarding note, so as to enable the court to satisfy the genuineness of the sample produced in the court. Further, the detecting officer has also a duty to depose

regarding the nature of the seal affixed on the bottle containing the sample and the can containing the remaining liquor and in this case, PW2 has not deposed anything regarding the nature of the seal used by him. (Emphasis Supplied)

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11. In the instant case, no specimen seal is affixed in Ext.P5

property list produced before the Court. No such evidence was given by PW1, the detecting officer. In the light of the judgment in Anil Varghese (Supra), the absence of specimen seal and the non- deposition of the same by PW1 is fatal to the prosecution.

12. There is yet another laches in this case, which is also

fatal to the prosecution. The investigation of the above offence was conducted with huge delay. Though the detection was on 15.12.2007, the final report was filed only on 29.09.2009. In Gangadharan v. State of Kerala [2024 (1) KHC 111] a learned Single Judge of this Court while considering the delay of two years in completing the investigation held thus: 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. S.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

CRL.REV.PET NO. 2256 OF 2014 7 2025:KER:26668 Sivadasan v. State of Kerala 2021 (1) KLT 744, Kumaran P. v. State of Kerala and another 2016 (4) KLT 718].

13. In the instant case also no explanation was offered by the

prosecution for the delay in completing the investigation. This unexplained delay in completing the investigation and filing of the final report is also fatal to the prosecution.

14. The trial court as well as the appellate court, failed to

properly appreciate these flows in the detection and investigation. It is trite that in the case of patent illegality in the judgment passed by the court below, this Court can interfere and correct the same by exercising revisional jurisdiction. Having considered the materials on record and the submissions made at the Bar in the light of the judgments of this Court referred above, I hold that the accused is entitled for benefit of reasonable doubt. In the result, the revision petition is allowed by setting aside the impugned judgment dated 25.11.2013 of the Assistant Sessions Judge, Hosdurg, in S.C.No.369 of 2009 and the judgment dated 10.10.2014 of the Sessions Court-I, Kasaragod, in Crl.Appeal No. 189 of 2013. The petitioner/accused is not found guilty of the offence under Section 8(2) of the Abkari Act, and he is set at liberty, cancelling his bail bond. If the petitioner/accused had deposited any

CRL.REV.PET NO. 2256 OF 2014 8 2025:KER:26668 amount before the trial court as part of the fine, the same shall be released to him on submitting a proper application. Sd/- MURALEE KRISHNA S., JUDGE DSV/-

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