

**Mani vs State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1338227](https://sooperkanoon.com/1338227)

**Court :** Kerala

**Decided On :** Jul-31-2023

**Judge :** Honourable Dr. Justice Kauser Edappagath

**Appeal No. :** CRL.A/611/2009

**Appellant :** MANI

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH  
MONDAY, THE 31ST DAY OF JULY 2023 / 9TH SRAVANA, 1945  
CRL.A NO. 611 OF 2009 AGAINST THE JUDGMENT DATED 29.1.2009  
IN SC 342/2006 OF ADDITIONAL DISTRICT COURT (ADHOC)-II,  
KALPETTA APPELLANT/ACCUSED: MANI, S/O RAMAN, AGE 46/08,  
PULIMUKKU VEEDU, ANAPPARA, NENMENI, WAYANAD. BY ADV  
SRI.RAFFEekh.K RESPONDENT/COMPLAINANT: STATE OF  
KERALA PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, ERNAKULAM. SMT S REKHA SR PP THIS CRIMINAL  
APPEAL HAVING COME UP FOR ADMISSION ON 31.07.2023, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:2:-

## JUDGMENT

Dated this the 31st day of July, 2023 This appeal has been preferred by the appellant/accused in S.C.No.342/2006 on the files of the Additional Sessions Judge, (Adhoc) II, Kalpetta (for short the court below), challenging the

### **judgment dated 29.1.2009 convicting and sentencing him under**

Section 55(b) and (g) of the Abkari Act.

2. The prosecution case in short is that on 17.8.1997 at

5 pm, the accused was found in possession of 75 litres of wash and 1 litre of arrack in contravention of the Abkari Act and Rules and thereby committed the offence.

3. To prove the case of the prosecution, PW1 to PW7 were examined and Exts. P1 to P8 were marked. MO1 to MO7

were identified. The court below after trial found the accused guilty for the offence punishable under Section 55(b) and (g) of the Abkari Act and convicted and sentenced him to undergo rigorous imprisonment for 1 year and to pay a fine of 1,00,000/-, in default to suffer rigorous imprisonment for a further period of 6 months. Challenging the said judgment, the

-:3:- accused has filed this appeal.

4. I have heard the learned counsel for the appellant and the learned Senior Public Prosecutor.

5. The learned counsel for the appellant impeached the finding of guilt passed by the court below on two grounds. (1) There is a considerable delay of 13 days in producing the contraband articles and samples at the court. (2) The seizure mahazar is not produced.

6. The main contention put forward by the learned counsel for the appellant is about the delay in producing the samples of contraband substance at the court

below. It is settled

that the unexplained delay in producing the contraband substance and the samples drawn from it at the court is fatal to the prosecution case. The Apex Court in *State of Uttar Pradesh v. Hansraj @ Hansu* [(2018) 18 SCC 355] has held that when there is delay in producing samples of contraband substance in Court and when evidence is that they were kept in police station, prosecution has to adduce evidence to show as to how and in what condition the same were preserved at the police station. A Division Bench of this Court in *Ravi v. State of Kerala* [2011

-:4:-

(3) KLT 353] has held that even though law does not mandate

production of seized articles forthwith before the Court and it enjoins only reporting the seizure forthwith to the Court, the production of the seized articles shall take place without unnecessary delay and if there is delay, it should be satisfactorily explained. A Single Bench of this Court in *Ramankutty v. Excise Inspector* [2013 (3) KHC 308] has held that in the absence of proper explanation for the delay, even one day's delay is fatal. Similar view has been expressed by another Single Bench of this Court in *Ravi v. State of Kerala* [2018 (4) KLT Online 2056]. Relying on the Division Bench's decision in *Ravi*

(supra), recently, another Single Bench of this Court in *Anilkumar v. State of Kerala* (2020 (4) KLT 34) has also taken the view that the delay in producing the samples of contraband substance in Court in the absence of satisfactory explanation is fatal. The seizure was on 17.8.1997. Ext.P4 is the property list. It would show that the seized contraband articles reached the court only on 30.8.1997. Thus there is a delay of 13 days. Even though the delay has been explained, it is not satisfactory.

7. The next contention is that the seizure mahazar has not -:5:-

been produced. Even though PW1 deposed that he collected samples of wash as well as arrack and prepared search list and seized all the articles, the seizure mahazar has not been produced.

8. The aforesaid vital aspects were not taken into

consideration by the court below while appreciating the prosecution case. For the reasons stated above, I am of the view that the conviction and sentence passed by the court below suffer from illegality and it cannot be sustained. In the result, the criminal appeal stands allowed. The conviction and sentence passed by the court below vide the impugned judgment are set aside. The appellant is found not guilty of the offences charged against him and accordingly he is acquitted. His bail bond is cancelled. Sd/- DR. KAUSER EDAPPAGATH JUDGE kp

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