

Ramesan vs State of Kerala

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Court : Kerala

Decided On : Feb-28-2023

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : CRL.A/1570/2007

Appellant : Ramesan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
TUESDAY, THE 28TH DAY OF FEBRUARY 2023 / 9TH PHALGUNA, 1944
CRL.A NO. 1570 OF 2007

**JUDGMENT IN SC 551/2001 OF ADDITIONAL SESSIONS COURT-
TRIAL**

OF ABKARI ACT CASES, NEYYATTINKARA APPELLANT/ACCUSED:
RAMESAN, S/O MANIYAN KALLINGAVILAKOM VEEDU, PIRAVILAKOM,,
VIZHINJAM VILLAGE. BY ADV SRI.BLAZE K.JOSE RESPONDENT: STATE OF
KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA,, REPRESENTED BY SUB INSPECTOR OF POLICE, VIZHINJAM

VILLAGE. SMT.S.REKHA SR.P.P THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 28.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:2:-

JUDGMENT

Dated this the 28th day of February, 2023 This appeal has been preferred by the accused in S.C.No.551/2001 on the files of the Additional Sessions Court for the trial of Abkari Cases, Neyyattinkara (for short the court below), challenging the judgment dated 30.5.2007 convicting and sentencing him under Section 58 of the Abkari Act.

2. The prosecution case in short is that on 12.1.1999,

the appellant was found in possession of 7 litres of arrack in a 10 litre black jerrycan in contravention of the Abkari Act and Rules and thereby committed the offence.

3. To prove the case of the prosecution, PW1 to PW5

were examined and Exts. P1 to P9 were marked. Exts. D1 to D4 were marked on the side of the defence. No one was examined on the side of the defence. MO1 material object was identified. The court below after trial found the accused guilty for the offence punishable under Section 58 of the Abkari Act and -:3:- convicted and sentenced him to undergo rigorous imprisonment for 2 years and to pay a fine of 1,00,000/-, in default to suffer rigorous imprisonment for a further period of 3 months. Challenging the said judgment, the accused has filed this appeal.

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

5. A perusal of the records would show that there is total

lack of evidence to show that the very same sample which was drawn from the contraband seized from the accused had reached the chemical analysis laboratory in a tamper proof condition in as much as the mahazar as well as the forwarding

note do not contain the sample seal.

6. This Court in K.Bhaskaran v. State of Kerala

(2020(5) KLT Online 1057) has held that the specimen seal shall be provided in the seizure mahazar and also in the forwarding note, so as to enable the court to satisfy the genuineness of the sample produced in the court. It was also observed in the said

judgment that the nature of the seal used shall be mentioned in

the seizure mahazar. A perusal of Ext.P1 mahazar would show -:4:- that it does not contain the sample seal or the description of the seal used.

7. This Court in Smithesh v. State of Kerala (2019 (2)

KLT 974) has held that the forwarding note must contain the specimen of the seal affixed on the sample. The forwarding note is the link evidence to show that it was the same sample which was drawn from the contraband seized from the accused had eventually reached the chemical analysis laboratory by change of hands in a tamper proof condition. Ext.P4 forwarding note does not contain seal. In the absence of seal in the forwarding note, it cannot be found that the prosecution has proved beyond reasonable doubt that the very same sample taken at the spot of occurrence had reached the chemical examiner for analysis in a tamper proof condition.

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 cannot be sustained. -:5:- In the result, the 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 offence charged against him and accordingly he is acquitted. His bail bond is cancelled. Sd/- DR. KAUSER EDAPPAGATH JUDGE kp

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