

Ravisudhan vs State of Kerala

Ravisudhan vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1864355

Court : Kerala

Decided On : Oct-30-2019

Judge : Honourable Mr. Justice Ashok Menon

Appeal No. : CRL.A/757/2005

Appellant : Ravisudhan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ASHOK MENON
WEDNESDAY, THE 30TH DAY OF OCTOBER 2019 / 8TH KARTHIKA,
1941 CRL.A.No.757 OF 2005 AGAINST THE ORDER/JUDGMENT IN
SC 8/2001 OF ADDITIONAL DISTRICT COURT (ADHOC)-I,
THIRUVANANTHAPURAM

APPELLANT/ACCUSED: RAVISUDHAN, S/O VASUDEVAN, THOPPIL
VEEDU, KULATHOOR, MUKKOLAIKKALMURI, ATTIPARA PAKUTHY.
BY ADVS. SRI.BASANT BALAJI SRI.V.VINAY SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN RESPONDENT/COMPLAINANT:
STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM. R1 BY

SRI.D.CHANDRASENAN, SR.PUBLIC PROSECUTOR OTHER
PRESENT: THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 30.10.2019, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

Dated this the 30th day of October 2019 The appellant is the sole accused in S.C.No.8/2001 on the file of the Additional Sessions Court (Adhoc)-I, Thiruvananthapuram, who was found guilty of having committed an offence punishable under Section 55(a) of the Abkari Act, convicted thereunder, and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,00,000/-, with a default sentence of six months rigorous imprisonment.

2. The prosecution case in brief is thus: PW1, the Excise Inspector of Kazhakootam Excise Range along with PW2- the Preventive Officer, were on patrol duty on 11.02.1998. At about 2.30 p.m., they found the accused in front of Chenkottukonam market carrying 15

bottles of zinger-berry containing

mahazar was prepared and the contraband was seized.

Sample was drawn, sealed and labelled.

was allegedly sent for chemical examination and Ext.P6

report was received confirming that

evidence adduced, the learned Sessions Judge convicted the accused. Hence, this appeal.

3. The learned Counsel appearing for the appellant

assails the impugned judgment on the ground that there is no forwarding note let in evidence with the specimen of a seal, which was allegedly affixed on the sample bottle. Without confirming that the sample was produced untampered, it cannot be

said with certainty that the very sample which was drawn from the contraband seized from the accused reached the Chemical Examiner. The Chemical Examiner in his report, marked as Ext.P6, has stated that the seals were found to be intact and it tallied with the specimen seal provided. But the seal which was found tallied could very well have been the seal of the jurisdictional Magistrate, who forwarded the sample for examination. Only on producing the forwarding note containing the specimen of the seal affixed on the sample could it be confirmed

that the seal was affixed in the presence of the accused. Absence of a forwarding note is fatal to an abkari case as held in *Vijayan @ Pattalam Vijayan v. State of Kerala*, 2018 (2) KHC 814. Ext.P1 mahazar states that the seal and label were affixed on the sample, which was drawn from the contraband. But it does not give any description of the seal that was

allegedly affixed on the sample. Absence of the forwarding note is also fatal to the prosecution case as is held in *P.Kumaran v. State of Kerala*, 2016 (5) KHC 632 and *Ravi v. State, S.I.of Police Meppadi*, 2018

(5) KHC 352.

4. It is also submitted by the learned Counsel for the appellant that the accused is involved in selling

of Ayurvedic medicines and that his

has produced documents pertaining to the purchase of the Ayurvedic medicines and also the licence pertaining to the sale of Ayurvedic medicines in the name of his

father in CrI.M.P.No.5652/2015. In view of the fact that there is no forwarding note, which confirms that the sample was properly produced before the Court in an untampered condition and that the very same sample which was drawn from the contraband allegedly seized from the accused reached the Chemical Examiner, the conviction

will not lie. Moreover the Property Clerk, who was allegedly received the contraband has also not been examined to testify that the sample and the contraband were untampered and the seals were intact. The learned Counsel also submits that being an Ayurvedic preparation, it is possible that the percentage of ethyl alcohol would increase with the passage of time and therefore the sample, which was examined about nine months after the seizure, there is a possibility of the percentage of the ethyl alcohol increasing.

5. That apart, there is also an unreasonable delay

in submitting the final report before the Court.

is true that delay alone will not be fatal to the prosecution when major part of the investigation is already over. But it is for the investigating officer to explain the reasons for delay in completing the investigation, particularly when the seizure is that of

an Ayurvedic medicine allegedly sold by

conviction cannot be sustained. In the result, the appeal is allowed and the conviction and sentence of the appellant vide the impugned judgment in S.C.No.8/2001 on the file of the Additional Sessions Court (Adhoc)-I, Thiruvananthapuram, are set aside and he is set at liberty, in case he is

not required in connection with any other case.

reimbursed. Sd/- ASHOK MENON dkr JUDGE

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com