

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

CRL.A.No. 695 of 2003 ()

AGAINST THE JUDGMENT IN ST 2352/1998 of J.M.F.C.,TIRUR

APPELLANT(S):

**THE SPECIAL GRADE SECRETARY,
VALANCHERY GRAMA PANCHAYATH,
VALANCHERY.**

RESPONDENT(S):

**1. P.P. ABDU RAHIMAN,
S/o.SAIDALI,
PANTHAPPALAKKAL HOUSE,
(PO) KOODALLUR,
VIA. ANAKKARA, PALAKKAD DIST.**

**2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.**

R1 BY ADV. SRI.R. SREEHARI

R2 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.Appeal 695 of 2003

Dated this the 30th day of July, 2015

JUDGMENT

The appellant who is the complainant in S.T.2352/98 of the Judicial First Class Magistrate, Tirur challenges the judgment of acquittal under Section 210 of the Kerala Panchayath Raj Act (Act 13 of 1997 r/w Rule 27 of Kerala Panchayath Raj Taxation and Appeal Rules, 1996) (Hereinafter referred to as 'the Act').

2. The complainant's case in the trial court was that the Secretary, Special Grade Grama Panchayat, Valanchery filed a complaint for recovery of a sum of Rs.1,45,504/- from the first respondent, who bid the panchayat bus stand from 1998 September to 1998 December and he defaulted the payment. In this circumstance, the prosecution was initiated under Section 210 of the Act.

3. During trial, the complainant examined PW1 and PW2 and the documentary evidence were marked as Exts.P1 to P3(a). The incriminating circumstances brought

out in evidence were denied by the first respondent while questioning him. He did not adduce any evidence. The trial court acquitted the accused, being aggrieved by that he preferred this appeal.

4. The learned counsel appearing for the revision petitioner contended that, the first respondent defaulted the of payment of amount due to the Panchayat, which is clear from the oral evidence of PW1 and PW2. The allegation was proved beyond reasonable doubt, but the trial court made a wrong appreciation. The Panchayath Raj Act give authority to the Panchayat to recover penal interest for the arrears of fees. Therefore, the perverse findings of the trial court is to be set aside.

5. Section 210 of The Kerala Panchayat Raj Act, 1994 reads as follows:

“210. Recovery of arrears of tax, cess etc._ Any arrear of cess, rate, surcharge or tax imposed or fees levied under this Act shall be recoverable as an arrear of public revenue under the law relating to the recovery of arrears of public revenue for the time being in force:

Provided that the Secretary of a Village

Panchayat may directly recover by distraint, under his warrant, and sale of movable properties of the defaulter subject to such rules as may be prescribed:

Provided further that, if for any reason the distraint or a sufficient distraint of a defaulter's property is impracticable, the Secretary may prosecute the defaulter before a Magistrate."

It is revealed from the oral evidence that, it is not a statutory liability as mentioned under Section 210, but on the other hand, it is right based upon a contract between first respondent and the appellant. First respondent bid the bus stand from the appellant and he has got right to collect fees as per the agreement. But the accused contended that non-payment was not willful, but due to bus strike and he was not in a position to collect the fee for 20 days. The Panchayath also issued a demand notice and he explained those facts to the Panchayat authorities. Even after, the appellant proceeded against the first respondent.

6. This court explained the statutory liability under Section 210 of the Act and the liability under a contract in

Thalavoor Grama Panchayat V. Salim 2004 (3) KLT

835 held as follows;

“This saving clause will save only those provisions in the notification or rules which are not inconsistent with the provisions of the Kerala Panchayat Raj Act, 1994. S.210 does not specifically provide prosecution for default of bid amount. Prosecution on default of bid amount, if made punishable in terms of that notification, it will be inconsistent with the Act.”

The same principle was also applied in an earlier decision in **Peravoor Grama Panchayath V. Rafi 2004 (2) KLT 1115 in para 3.**

7. Therefore it is clear that, the due amount claimed by the appellant is based upon an agreement executed between appellant and first respondent and for realizing that amount the procedure provided under Section 210 of the Panchayath Raj Act is not maintainable. First respondent submitted that civil suit filed by the appellant was decreed.

In the circumstance, it is clear that the alleged prosecution is without any jurisdiction and to recover arrears of the bid amount by an agreement is really a waste exercise. The appeal fails and accordingly it is dismissed.

STK

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE