

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

CRL.A.No. 258 of 2008 ()

**AGAINST THE ORDER IN CrI.L.P. 1089/2007 OF HIGH COURT OF KERALA DATED
22-10-2007**

**AGAINST THE JUDGMENT IN ST 377/2000 OF JUDICIAL I CLASS
MAGISTRATE-I,PERAMBRA DATED 16-11-2001**

APPELLANT/COMPLAINANT:

**CHANGAROTH GRAMA PANCHAYATH,
REP. BY ITS SECRETARY, KOZHIKODE.**

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS/ACCUSED AND STATE:

- 1. SAJITH, S/O.KANARAN,
PALERI AMSOM DESOM, KOYILANDY TALUK.**
- 2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

R2 BY PUBLIC PROSECUTOR SRI. GITHESH R.

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01-04-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

K. ABRAHAM MATHEW, J.

Crl.A.No.258 of 2008

Dated this the 1st day of April, 2015

J U D G M E N T

In an auction conducted by the appellant Panchayat for removal of sand from a river the first respondent became the successful bidder. On 26.06.1997 the Panchayat and the first respondent entered into an agreement, whereby the latter agreed to pay the amount due from him within a specified period. On the allegation that he failed to pay the amount the appellant Panchayat filed a complaint against him under Section 210 of the Kerala Panchayat Raj Act r/w. Rule 27 of the Kerala Panchayat Raj (Taxation and Appeal) Rules, 1996. The learned Magistrate acquitted the first respondent. The Panchayat has come up in appeal.

2. Heard.

3. Under Section 210 of the Panchayat Raj Act if distraint of a defaulter's property is impracticable, the Secretary may institute prosecution against him. In this

case the learned Magistrate acquitted the appellant for the main reason that the original distraint warrant was not produced.

4. A copy of the warrant was marked as Ext.P6. This was marked without any objection. It is well settled that mode of proof can be waived by the party concerned. I have perused the evidence of the witness concerned. The marking of the document was not objected to by the first respondent. The learned Magistrate went wrong in not acting upon Ext.P6. The more interesting aspect is that the learned Magistrate has observed that the document was not admissible in evidence. Then why did he admit it in evidence. His finding is patently wrong.

5. The learned Magistrate has made certain observations about the validity of the agreement. No party had a case that the agreement was invalid. The observations should have been avoided. Another ground mentioned by the learned Magistrate is that there is no evidence to prove that the house visited by PW2 belonged to

the first respondent. The prosecution case is that the first accused did not own any property, immovable or movable. So the learned Magistrate was wrong in holding that there is no evidence to prove that the house visited by PW2 belonged to the first respondent. Yet another ground is that the first respondent was permitted to take part in the auction held in the subsequent year though he had allegedly defaulted payment of the amount due to the Panchayat in the previous year. That is no ground to hold that the prosecution is bad. The learned Magistrate considered immaterial and irrelevant aspects to acquit the first respondent. As observed earlier, the refusal of the learned Magistrate to act upon Ext.P6 warrant is illegal. The order of acquittal is liable to be set aside. The evidence proves that the first respondent made default in paying the amount due to the Panchayat without sufficient reason.

In the result, this appeal is allowed. The order of acquittal passed by the learned Magistrate is set aside. The first respondent is directed to pay the appellant Rs.33,293/-

(Rupees thirty three thousand two hundred and ninety three) with interest at 9% per annum from 11.04.2000 till realisation and Rs.32,000/- (Rupees thirty two thousand only) as fine. If the amount is not paid within one month, the appellant may realise it in accordance with law.

Sd/-
K. ABRAHAM MATHEW
JUDGE

//True copy//

P.A. TO JUDGE

shg/