

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

CRL.A.No. 1637 of 2004 ()

**AGAINST THE ORDER/JUDGMENT IN CrI.L.P. 390/2004 of HIGH COURT OF KERALA
DATED 04-10-2004**

**AGAINST THE JUDGMENT IN CC 578/2000 OF JUDICIAL FIRST CLASS
MAGISTRATE-III,KOZHIKODE DATED 25-03-2004**

PETITIONER/COMPLAINANT:

**P.V. GOPI @ MANI, S/O. APPATHA,
AGED 34 YEARS, PALLICHAM VEETIL, P.O. PAVANDOOOR
PAVANDOOOR AMSOM, DESOM, KOZHIKODE.**

**BY ADVS.SRI.P.S.SREEDHARAN PILLAI
SRI.K.B.SAJEESH
SRI.P.GOPINATH
SRI.C.S.SUNIL
SRI.P.R.SREEJITH**

RESPONDENTS/ACCUSED 1 & 2/STATE:

- 1. KUMARAN, S/O. GOPALAN NAIR,
KUNDIYEDATH PARAMBU HOUSE, NANMINDA AMSOM, DESOM
KOZHIKODE.**
- 2. GANESHAN, S/O. CHOYI, VENGOLIKANDI PARAMBU,
NANMINDA AMSOM, DESOM
KOZHIKODE.**
- 3. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

**R1&2 BY ADVS. SMT.DAISY A.PHILIPOSE
SRI.JAI GEORGE**

R3 BY PUBLIC PROSECUTOR SMT. BINDU GOPINATH

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

K. ABRAHAM MATHEW, J.

Crl.A.No.1637 of 2004

Dated this the 16th day of January, 2015

J U D G M E N T

Respondents 1 & 2 were Police Constables attached to Kakkoor Police Station. The appellant filed a complaint in the court of the Judicial Magistrate of First Class-III, Kozhikode alleging that the first respondent took him to the police station, assaulted him after keeping him in wrongful confinement in the police lockup and he threatened the wife of the appellant. It is further alleged that the second respondent also assaulted him in the lock up. According to the appellant, thus respondents committed the offences under Sections 323, 342, 506 r/w. Section 34 IPC. After enquiry the learned Magistrate took cognizance of the offence under Section 323 r/w. 34 IPC alone. After the trial the learned Magistrate acquitted respondents 1 & 2 of the offence. In this appeal, the complainant challenges the order of acquittal.

2. Heard the learned counsel for the appellant,

learned counsel for respondents 1 & 2 and the learned Public Prosecutor.

3. Respondents 1 & 2 denied that the first respondent took the appellant into custody at 5 p.m. on 25.10.1999, threatened his wife, kept him in the police lockup and he and the second respondent assaulted him in the police lockup. The version is that it was PW5 Sub Inspector of Police who took the appellant into custody in connection with crime No.178/1999 registered for the offence under Section 509 IPC and that all the allegations against respondents 1 and 2 are false.

4. The appellant was produced before the learned Magistrate concerned on 26.10.1999. Ext.P2 is a copy of the remand report which proves that the appellant made a complaint to the Magistrate that he was assaulted by the police. The learned Magistrate sent him to Government Hospital for examination. PW4 Dr.Ajith Kumar found no external injury on the appellant but recorded that the appellant complained of pain, which is seen from the

testimony and Ext.P1 copy of the wound certificate prepared by the doctor.

5. The whole case depends upon the truth of the allegation that the first respondent took the appellant into custody from his house at about 5 in the evening on 25.10.1999. To prove this, the appellant was examined as PW1, a neighbour as PW2 and the appellant's wife as PW3. All of them deposed that the first respondent came to the appellant's house threatened his wife and took him to police station. The appellant also examined the then Sub Inspector of Police, Kakkoor as PW5. He deposed that it was he who took the appellant into custody at about 5.30 p.m. on 25.10.1999 in connection with crime No.178/1999 and the latter was produced before the learned Magistrate on the next day. The appellant's learned counsel did not invoke the provision under Section 154 of the Evidence Act and sought the permission of the court to put to him questions which might be asked in cross-examination. The appellant is bound by the evidence of

PW5. His testimony definitely proves that it was he who took the appellant into custody from a place other than the house of the appellant. This demolishes the foundation of the appellant's case.

6. As mentioned earlier, no external injury was noticed by the doctor. The complaint was filed only on 21.12.1999. All these facts compelled the trial court to hold that the appellant failed to prove the allegation against the first and second respondents. I fully agree with the view taken by the learned Magistrate. The order of acquittal cannot be interfered with. There is no merit in the appeal.

In the result, this appeal is dismissed.

Sd/-
K. ABRAHAM MATHEW
JUDGE

//True copy//

P.A. TO JUDGE

shg/