

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

THURSDAY, THE 28TH DAY OF MAY 2015 / 7TH JYAISHTA, 1937

Cr1.L.P..No. 160 of 2015

AGAINST THE JUDGMENT IN CC 732/2012 of J.M.F.C.,ERATTUPETTA DATED
19.1.2015

PETITIONER(S)/COMPLAINANT:

BABU @ JAMES
S/O.MATHAI, KULAMBEL HOUSE,
VAZHAKULAM PO,
ERNAKULAM DISTRICT

BY ADVS.SRI.SHAJI THOMAS
SRI.BINU PAUL
SRI.T.V.VINU
SRI.GEORGE PULIKUTHIYIL

RESPONDENT(S)/STATE & ACCUSED:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, KOCHI 682031
2. SOJAN, AGED 49 YEARS,
S/O.KUNJUKUTTY, KANATHEL HOUSE,
ANTHINADU PO,
KOTTAYAM DISTRICT -686651

BY GOVERNMENT PLEADER SMT.P.MAYA

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 28-05-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

dlk/13/3/18

C.T.RAVIKUMAR, J

Crl.L.P. No.160 of 2015

Dated this the 28th day of May, 2015

ORDER

This petition for special leave has been filed under section 378(4) by the complainant in C.C.732/2012 on the files of the Court of the Judicial First Class Magistrate, Erattupetta. The petitioner filed a private complaint alleging commission of offence punishable under section 506(ii) and 294(b) of the Indian Penal Code. It was taken on file and registered as C.C.No.732/2012. To prove the charge against the second respondent/accused the petitioner got himself examined as PW1 besides getting examined PWs 2 to 5 and marked Exts.P1 to P4. On an appreciation of the evidence on record the trial court found that the petitioner herein/complainant had failed to prove that the accused had committed the aforesaid offence. Consequently he was found not guilty and was acquitted under Section 248(1) of the Code of Criminal Procedure.

2. The case of the petitioner/complainant was that on 1.11.2011 the accused and one of his friends by name Jiji

manhandled him and in connection with the same crime No.572/2011 of Erattupetta Police Station was registered, the said case is now pending trial. The second respondent/accused had been insisting him to withdraw the said case. However, he did not yield to the said request of the accused. On 28.1.2012 while the petitioner was waiting for the bus at Anjoottimangalam along with his workers, the accused/second respondent came there in a jeep bearing registration No. KRL 1080 and on seeing the complainant he drove the vehicle towards left side and tried to kill him by hitting the jeep. According to him, he and his workers managed to escape by running to a nearby shop. It is also the case of the petitioner that the second respondent herein had threatened him by saying that if he would do away with him if he did not withdraw the case filed against him. It is his further case that immediately thereafter he lodged a complaint before the Dy.S.P. , Pala. However, no action was taken thereon. In the said circumstances, he filed the complaint alleging commission of offences punishable under Sections 308, 506(ii) and 294(b) of the IPC. However, cognizance was taken only of the offence under sections 506(ii) and 294(b) of the IPC.

3. The learned counsel for the petitioner contended that it is the outcome of an utter perverse appreciation of the evidence that culminated in the acquittal of the second respondent and further that if the evidence of the petitioner as PW1 and that PWs 2 to 5 were appreciated appropriately the learned magistrate would not have held that the petitioner had failed to prove the commission of offences under section 506(ii) and 294(b) of IPC by the second respondent. This is the nub of the pleadings and contentions of the petitioner based on which he seeks leave to appeal against the acquittal of the accused, the second respondent herein.

4. There can be no doubt that leave to appeal against an order of acquittal cannot be granted on the mere asking and to get an affirmative nod one has to make out a *prima facie* case. An order of acquittal will not be interfered with generally unless compelling and substantial reasons are there because the presumption of innocence of the accused is further strengthened by such acquittal. Going by the decision in **Chandigarh Administration v. Dharam Singh** reported in AIR 1985 SC 1671 of the Hon'ble Apex Court, if an order of acquittal

was recorded after taking into account all the evidence and holding that the materials before the court are not sufficient to establish the charges beyond reasonable doubt and the accused is entitled to get the benefit of doubt refusal to leave to appeal would be proper if the court is of the view that ultimately the grant of benefit of doubt may have to be maintained. The very case of the petitioner itself would reveal that another criminal case is pending between the petitioner and the second respondent and the second respondent is the accused therein. Cognizance of the offence under sections 506(ii) and 294(b) of IPC alone were taken though the petitioner had also alleged commission of offence under Section 308, IPC against the second respondent. Obviously, the petitioner did not take up the matter further against the disinclination to take cognizance of the offence under section 308, IPC. The petitioner got himself examined as PW1 besides getting examined his own workers as PW2 to PW5. Based on the evidence the second respondent was discharged of the offence under section 294(b) of the IPC holding that the ingredients to constitute the said offence were not made out from the evidence of PW1 to PW5. The petitioner had not

challenged the the order of discharge of the petitioner under section 294(b) though charge under section 506(ii) alone was framed. In short, the case was proceeded for trial only on the accusation of offence under section 506(ii), IPC. Now, I will consider whether the petitioner has made out a case for granting leave for the acquittal of the second respondent, of the offence under section 294(b) of the IPC, bearing in mind the aforesaid circumstances. The learned counsel for the petitioner furnished a copy of the deposition of the petitioner as PW1. It would reveal that what he had deposed is that the second respondent drove the vehicle to his side. PWs 2 to 5 are admittedly the workers of PW1. When PW1 himself did not have a case that the vehicle has drove towards him and whereas his case is only that the vehicle was driven to his side the evidence of PWs 2 to 5 could not improve the case of the petitioner. The trial court took into consideration whether the ingredients to attract the offence under section 506(ii) IPC have been established. The learned counsel for the petitioner could not bring to my attention that the court below had not adverted to the evidence incorrectly and the findings of the court below that the accused had not threatened

PW1 is not true to the evidence on record. The learned counsel for the petitioner would concede that no such case was spoken by the petitioner while being examined as PW1. The trial court also found that the evidence of PW1 would not reveal the act of the accused viz., the second respondent caused alarm in his mind. The ingredients to attract the offence under section 506(ii) would reveal that to constitute it (1) the accused must have threatened a man with some injury to his person, reputation, or property, or to the person, reputation or property of another in whom the said person was interested; (2) the accused must have done so with the intent to cause alarm to that person. When those ingredients were not established going by the evidence of PW1, according to the trial court and evidence on record does not constitute the said offence and consequently, the second respondent was found entitled to get the benefit of doubt and above all, when the evidence of PW1 also reveals that such grant of benefit of doubt, is ultimately to be maintained, I find no reason to grant the leave as sought for. In the circumstances, if ultimately the second respondent is entitled to get the benefit of doubt and also when all the ingredients to attract the offence under section 506(ii) are

not established no fruitful purpose could be served by grant leave to appeal.

In the said circumstances, having heard the learned counsel for the petitioner and perusing the judgment I am of the view that this is a case where leave to appeal is to be declined. Accordingly, it is declined and this petition for leave to appeal is dismissed.

Sd/-

C.T.RAVIKUMAR, JUDGE.

dlk