

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 20TH DAY OF MARCH 2015 / 29TH PHALGUNA, 1936

Cr1.Rev.Pet.No.2137 of 2003

AGAINST THE JUDGMENT IN CC 216/1998 of J.M.F.C.-II, PERINTHALMANNA
DATED 31-05-2003

REVISION PETITIONER(S)/PW1:DEFACTO COMPLAINANT

P.V.SIVADASAN
S/O.RAGHAVA VARIYER
PUTHARAMANA WARRIAM
MELATTOOR, MALAPPURAM DIST.

BY ADV.SRI.K.RAMAKUMAR (SR.)

RESPONDENT(S)/COMPLAINANT & ACCUSED:

- 1.STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
2. THE SUB INSPECTOR OF POLICE, MELATTUR.
3. PUTHAN VEETIL RAMADAS
S/O.NARAYANAN EZHUTHACHAN, MELATTUR AMSOM DESOM
4. PUTHAN VEETIL AYYAPPAN
S/O.NARAYANAN EZHUTHACHAN, MELATTUR AMSOM DESOM
5. PUTHAN VEETIL KRISHNAN
S/O.NARAYANAN EZHUTHACHAN, MELATTUR AMSOM DESOM
6. PUTHAN VEETIL SATHYAN
S/O.NARAYANAN EZHUTHACHAN, MELATTUR AMSOM DESOM
7. PUTHAN VEETIL BABU RAJ
S/O.NARAYANAN EZHUTHACHAN, MELATTUR AMSOM DESOM
8. PUTHAN VEETIL SANKARA NARAYANAN
S/O.NARAYANAN EZHUTHACHAN, MELATTUR AMSOM DESOM
9. KARANTHODIKA UNNIKRISHNAN
S/O.KUTTAN EZHUTHACHAN, EDAPPATTA AMSOM, MELATTUR

10.THUVVATTUTHODY SANTHOSH
S/O.RAMACHANDRAN, CHEMMANIYODE

R,R10 BY ADV. SRI.BABU S. NAIR
R1, BY PUBLIC PROSECUTOR SRI.N.SURESH
R,R4 BY ADV. SMT.PREETHI. P.V.
R,R3 BY ADV. SRI.K.M.SATHYANATHA MENON

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
20-03-2015,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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CRL.R.P. No.2137 OF 2003

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Dated this the 20th day of March, 2015

ORDER

This revision petition is directed against the judgment in C.C.No.216 of 1998 passed by the Court of Judicial First Class Magistrate-II, Perinthalmanna whereby and whereunder the accused persons viz., respondents 3 to 10 herein were acquitted after being tried for the charge of commission of offences under sections 143, 147, 148, 447, 427, 323, 324 and 326 read with section 149, IPC. The case of the prosecution was that on 28.1.1998 at about 2 a.m, the accused persons in prosecution of their common object formed themselves into an unlawful assembly, committed rioting with deadly weapons such as iron rod and committed criminal trespass into the residential premises of PW1, demolished the walls of his house under construction, thrown its windows and doors into a well and thereby caused mischief. They were also accused of voluntarily causing

grievous hurt on PW1 by beating him with iron rod and thereby causing fracture on his left hand. To bring home the charges against the accused, the prosecution had examined PWs 1 to 13 and got marked Exts.P1 to 8. MO1 to MO3 were identified. After the closure of the evidence of the prosecution, the petitioners were examined under section 313 Cr.P.C and they had denied all the incriminating circumstances put to them. On the side of the defence, one Krishnan was examined as DW1 and Exts.D1 to D7 were marked. On an evaluation of the evidence on record, the learned Magistrate found that the prosecution had not succeeded in proving the offence under sections 143, 147, 148, 323, 324 and 326 read with 149, IPC against the accused. In the light of Ext.P6 scene mahazar, it was held that the prosecution had succeeded in proving that damage has been caused to the house under construction. But at the same time, the prosecution had failed to prove that those mischiefs were committed by the accused persons and consequently, found the said point also against the prosecution. In the light of such conclusions and findings arrived

at, based on the evidence on record, the trial court found the accused/respondents 2 to 10 not guilty of the offences alleged against them. Consequently, they were acquitted under section 248(1) Cr.P.C. This revision petition is filed in the said circumstances.

2. I have heard the learned counsel for the petitioner, learned counsel for the third respondent, learned counsel for the fourth respondent, learned counsel for the 8th accused/10th respondent and also the learned Public Prosecutor.

3. There cannot be any doubt with respect to the position that sections 397 and 401 Cr.P.C did not create any right in the litigant and they only preserve the power in the court to see whether justice has been done in accordance with recognised principles of criminal jurisprudence. In the case of revision against acquittal, an interference is not permissible unless it is shown that the court concerned appreciated the evidence in an utterly perverse manner or totally against the weight of evidence. In this case, as noticed hereinbefore, the prosecution got examined PW1 to PW13 and got marked Exts.P1

to P8. PW1, the injured would depose that while he along with his mother and sister (PW2 and PW3) were sleeping in the premises where construction of the house was going on, the assailants came there at 2 a.m on 28.1.1998 and spread chilly powder in his eyes and beaten him with sword-cum-stick and iron rod. He deposed that he sustained fracture on left hand and injuries on his head and face and he was taken to Alshifa Hospital, Perinthalmanna from where Ext.P1 statement was recorded by PW13. PW2 and PW3, the mother and daughter of PW1, virtually corroborated the evidence of PW1. PW 4 to 7 were the eye witnesses. They would depose that some persons entered into the property of PW1 and caused injuries on PW1 and they had committed serious damage to the house under construction and at the same time, they did not name any of the accused as the person or persons who had done damage, to the house or inflicted injury on PW1. PW9 is cited as eye witness by the prosecution. However, he would depose that he did not know the persons who entered into the property at the time of the incident. PW12 is the wife

of PW1. She would depose that she reached the place of occurrence on getting information regarding the fact that PW1, her husband sustained injuries. She would further depose that when she reached the spot, she found injuries on the face and head of PW1. According to her, PW1 was taken to hospital by herself and PW4 Appu. PW13 registered Ext.P5 FIR after recording Ext.P1 FIS given by PW1. He had conducted the investigation and seized MOs 1 to 3 under Ext.P6 mahazar. The learned Magistrate on careful evaluation of the evidence found that PW1, the injured gave evidence contrary to Ext.P1 FIS and at the same time, during his cross examination, he would depose that he had stated before the police that since chilly powder was spread on his eyes he could not see as to who had inflicted injuries on him and what he had stated to the police was correct. The trial court also took note of the factum of pendency of civil dispute between the accused and PW2, mother of PW1 with respect to the property in which construction of the house was going on. There cannot be any doubt with respect to the fact that the evidence on record would reveal

that PW1 had sustained injuries. But at the same time, after carefully scanning the evidence, the trial court found that the prosecution had miserably failed to connect the accused with the alleged offences. Though PW1 is the injured, in view of the material contradictions in his evidence, the trial court disbelieved his version especially regarding the participation of the accused persons in the said incident. As noticed hereinbefore, during the chief examination itself, PW1 deposed that the persons who entered into the premises spread chilly powder in his eyes and and it occurred during the night and therefore, he could not identify the persons who inflicted injuries on him. According to him, they put chilly powder on the face of his mother and sister, as well. When confronted with Ext.P1, he would depose that what is recorded thereunder as statements given to the police are correct. In such circumstances, I could not find any illegality in the matter of appreciation done by the trial court especially for discrediting the version of PW1. In such circumstances, necessarily, the fact that a civil dispute was pending between the accused persons

and the mother of PW1 might have tended to rope in the accused persons. In such circumstances, I could not find any illegality in the matter of appreciation of the evidence of PW1 by the trial court. When that be the circumstances, merely because mother and sister of PW1 (PW2 and PW3) corroborated the evidence of PW1, it cannot be a reason for connecting the accused with the alleged offence when the evidence of PW1 itself is not creditworthy. In this context, it is also to be noted that PWs 4 to 7 workers who were engaged in the construction of the house in the said property had deposed only that on that day, some persons entered into the property of PW2 and caused injuries to PW1 and committed severe damage to the house under construction. They did not name any of the persons as assailants who done damage, to the house and inflicted injuries on PW1. PW12 is the wife of PW1. She would depose that she had reached the place of occurrence on getting information regarding the attack on her husband. She also deposed that she did not find any weapon left in the place of occurrence. In this context, it is to be

noted that going by Ext.P6, MO1 to MO3 were seized from the place of occurrence. MO1 is the iron rod. MO2 series are bamboo sticks and MO3 is the blood stained grass collected from the place of occurrence. According to PW1, the injury was inflicted on his head and shoulder with a sword-cum-stick. In fact, going by the evidence of PW1, he sustained several beatings besides being slashed with sword-cum-stick and also with rod. PW8, the doctor who treated him at Alshifa Hospital and issued Ext.P2 medical certificate would depose that he had noted only one injury on PW1. True that it was an injury on the head with 8cm length on the left parietal area and he clarified that said injury could not be caused by a sharp weapon. In the context, it is to be noted that Pws 1 to 3 had deposed that PW1 sustained injuries on the left side with a sword-cum stick. But no such injuries were even found on the face. Though PW1 has categorically deposed that chilly powder was present on his face at the time when he was examined by PW8, PW8 would depose that he could not trace the presence of chilly powder on the body of PW1 at

the time of examination. In short, after a careful examination of the oral testimonies of PW8, the learned magistrate found that except PW1 to PW3, none had supported the prosecution. The learned magistrate had given reasons as to why PW1 to PW3 could not be believed. In such circumstances, I do not find any reason that the appreciation of evidence by the learned Magistrate was utterly perverse or that the findings are against the weight of evidence. There cannot be any doubt with respect to the fact that merely because the version of the injured that he sustained injuries in a particular incident found as true and correct, that by itself is no ground for convicting the accused if the prosecution had failed to connect the accused with the alleged offence. The appreciation of the evidence by the learned Magistrate and the conclusions arrived at based on the evidence can only be said to be a plausible view of the issues based on the evidence on record. In such circumstances, since this being a revision against the acquittal, this Court cannot re-appreciate the evidence to come to a different view and then upturn the acquittal. In short, I do not find

any reason to interfere with the acquittal of the accused persons under section 248 (1) by the learned magistrate. In the result, this revision petition is liable to fail and accordingly, it is dismissed.

Sd/-
C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

