

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V**

**MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937**

**Crl.Rev.Pet.No. 2161 of 2003**  
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**AGAINST THE JUDGMENT IN CRL.A.NO.92/1998 of ADDITIONAL SESSIONS COURT,  
FAST TRACK (AD HOC) NO.II, THIRUVANANTHAPURAM**

**AGAINST THE JUDGMENT IN C.C.NO.639/1995 of J.M.F.C.-III, NEYYATTINKARA**

**REVISION PETITIONER(S)/APPELLANT - ACCUSED NO.4:**  
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**Y.MOHANDAS  
BATHELVILAKATHU VEEDU  
MUTTAKAD, VENGANOOR VILLAGE,  
THIRUVANANTHAPURAM DISTRICT**

**BY ADVS.SRI.S.JAMES VINCENT  
SRI.TERRY V.JAMES**

**RESPONDENT(S)/RESPONDENT - COMPLAINANT:**  
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**THE STATE OF KERALA, REP.BY  
THE DIRECTOR GENERAL OF PROSECUTIONS,  
ERNAKULAM**

**BY PUBLIC PROSECUTOR SMT.M.G.LISHA**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17-08-  
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**Bb**

**RAJA VIJAYARAGHAVAN V, J.**

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**Crl.R.P.No.2161 of 2003**  
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**Dated this the 17<sup>th</sup> day of August, 2015**

**O R D E R**

The 4<sup>th</sup> accused in C.C.No.639/1995 on the file of the Judicial First Class Magistrate Court-III, Neyyattinkara challenges the concurrent verdict of guilt passed against him for offence punishable under sections 447 & 427 of the Indian Penal Code.

2. The prosecution case is that, on 01.06.1995 at about 1.a.m., accused Nos.1 to 9 in the said crime formed themselves into an unlawful assembly armed with deadly weapons, trespassed into the property of the prosecution witnesses and destroyed the barbed boundary fencing erected on the boundary of the respective properties and also cut and destroyed coconut trees and caused damage.

3. In order to prove the case of the prosecution, PWs

1 to 8 were examined through whom Exts.P1 to P3 were marked. No defence evidence was adduced. The learned magistrate on an appreciation of the evidence, acquitted accused Nos. 1 to 3 and 5 to 8, but, the 4<sup>th</sup> accused - the petitioner herein was convicted for the offence punishable under sections 143, 147, 148, 447 and 427 read with section 149 of the Indian Penal Code and he was sentenced to pay a fine of Rs.500/- for the offence under section 143, Rs.1,000/- for the offence under section 148, Rs.500/- for the offence under section 447 and Rs.3,000/- for the offence under section 427 with default sentence of simple imprisonment for one month each for the offence under sections 143, 148 and 447 of the Indian Penal Code and default sentence of simple imprisonment for 3 months for the offence under section 427 of the Indian Penal Code. Against the above judgment, conviction and sentence Crl.A.No.92/1998 was preferred by the petitioner herein before the Sessions Court, Thiruvananthapuram. As per

judgment dated 23.06.2003, the learned Sessions Judge, Thiruvananthapuram partly allowed the appeal and the conviction and sentence of the petitioner for the offence under sections 143, 147 & 148 was set aside and the conviction and sentence under sections 447 & 427 was upheld. It is against these concurrent findings that the petitioner is here by filing this Criminal Revision petition under sections 397 & 401 of the Code of Criminal Procedure.

4. I have heard the learned counsel appearing for the petitioner as well as the learned Public Prosecutor.

5. The learned counsel appearing for the petitioner has challenged the concurrent findings on various grounds. According to the learned counsel, the courts below has failed to properly appreciate the evidence let in by the prosecution witnesses. Interference in revision is warranted, since the evidence let in by PWs 1, 3 & 4 was disbelieved in material

particulars by the trial court as well as the appellate court. It is further contented that PW2 on whose evidence the courts below have entered into a finding of guilt, had consented to surrender a portion of his property to the Panchayat. It is based on the above consent that the petitioners and others had entered the property and cut and removed certain trees. There was absolutely no intention on the part of the petitioner to trespass or to cut and remove and in view of the above, a finding of guilt under sections 427 and 447 of the Indian Penal Code was not warranted. It was further contented that PW2 - Johnson had preferred a civil suit as against the petitioners and others seeking damages and the said suit was dismissed. The judgment rendered by the Civil court in the said suit was produced at the stage of appeal by filing an application under section 391 of the Code of Criminal Procedure. If the said judgment was considered, it would have revealed that the case set up by the prosecution and the evidence of PW2

was false. Finally, it was contented that if the evidence let in by the prosecution was appreciated in a proper manner, it would have revealed that the evidence of participation of the petitioner herein with the alleged crime was very slender and there was no proper identification of the petitioner in the above crime. The learned counsel also submitted that all other persons who had participated in the perpetration of the crime was acquitted by the trial court holding that the prosecution had failed to prove their participation in the commission of the offence. The appellate court also came to the conclusion that the petitioner was not guilty for the offence under sections 143, 147 and 148. This was done after disbelieving the prosecution witnesses. If that be the case, according to the learned counsel, the court below as well as the appellate court ought not have held that the petitioner was guilty of the offence under sections 427 and 447 of the Indian Penal Code.

6. On the other hand, the learned Public Prosecutor has contented that both the courts below have appreciated the evidence let in by the prosecution and this court would not be justified in this Court interfering with the concurrent findings passed by the courts below.

7. I have considered the rival contentions.

8. Both the courts below have relied on the evidence of PW2 to hold that there is ample evidence to reveal the participation of the petitioner in the perpetration of the crime. PW2 has specifically mentioned the role played by petitioner and the deceased- accused No.9 and the persons who had taken part in destruction of the trees stood in his property. The trespass and mischief was committed at 1 a.m on 01.06.1995. Ext.P3 scene mahazar will also reveal the extent of damage caused by the accused in the original crime. Both the court below, relying on the evidence of

PW2, have come to the conclusion that the petitioner as well as the accused no.9 had participated in the commission of the crime.

9. After anxiously considering the contentions raised by the petitioner, I do not think that this is a fit case to interfere in revision by re-appreciating the evidence in its entirety. Even though the learned counsel appearing for the revision petitioner assailed the judgments rendered by the courts below on various grounds, I do not see any scope for interference. The findings recorded by the courts below are on the basis of appreciation of oral and documentary evidence. Both the courts below have believed the prosecution witness. Sitting in this rarefied revisional jurisdiction, this Court will not be justified in interfering with the concurrent findings of fact rendered by the courts below unless there is some perversity resulting in blatantly erroneous appreciation of law. I do

not find any error or impropriety in the findings recorded by the courts below.

In view of the above, the revision petition is dismissed confirming the findings of the courts below.

Sd/-  
**RAJA VIJAYARAGHAVAN V,  
JUDGE.**

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*[True copy]*

*P.A to Judge*