

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

Crl.Rev.Pet.No. 14 of 2006 ()

AGAINST THE JUDGMENT IN CC 554/2000 of J.M.F.C.,KATTAKADA
DATED 28-07-2005

REVISION PETITIONER(S)/DEFACTO COMPLAINANT.:

T.VIJAYAKUMARAN NAIR, AGED 54 YEARS,
S/O.THYAGARAJAN NAIR, VIJAYASREE, ANACODE,
PANNIYODE P.O. THIRUVANANTHAPURAM.

BY ADV. SRI.D.KISHORE

RESPONDENT(S)/COMPLAINANT AND ACCUSED.:

1. THE SUB INSPECTOR OF POLICE,
KATTAKKADA.
2. MANIKANDAN NAIR,
S/O.THANKAPPAN NAIR, SWATHY NIVAS,
ANACODE MURI, VEERANACAVU VILLAGE,
THIRUVANANTHAPURAM.
3. RAMACHANDRAN NAIR,
S/O.THANKAPPAN NAIR,
BHAJANAMADATHIL VEEDU,
ANACODE MURI,
VEERANACAVU VILLAGE.
4. ANILKUMAR, S/O.GOPI PILLAI,
SANAL SADANAM, ANACODE MURI,
VEERANACAVU VILLAGE.

R1 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN
R2 TO R4 BY ADV. SRI.P.VIJAYA BHANU
BY ADV. SRI.PRASUN.S

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl. R.P. No.14 of 2006

Dated this the 4th day of June, 2015

ORDER

This revision petition is preferred against the judgment of acquittal passed by the Judicial First Class Magistrate, Kattakada in C.C.554/00 for offence punishable under Section 341, 323, 324, 326 r/w Section 34 IPC by the de facto complainant.

2. Brief facts are that on 22.02.2000 at 4.30 am, the accused with their common intention wrongfully restrained the revision petitioner, A1 beat the petitioner with a crow bar and A2 beat with a bamboo stick and A3 pelted stone, as a result, the revision petitioner sustained serious injuries. On the basis of the information, the Sub Inspector of Police, Kattakada Police Station registered a crime and after investigation, laid charge before Judicial Magistrate, Kattakada. In the trial court, prosecution examined PW1 to PW8 and marked Ext.P1 to P6 in evidence. Accused examined DW1 in support of their defence contention. The trial court after sifting and

weighing the evidence on record acquitted the accused.

2. The learned counsel appearing for the revision petitioner contended that there was miscarriage of justice due to the non-consideration of the evidence of the material witnesses. The medical evidence is corroborating the evidence of PW1, which was supported by the independent witnesses. There was no discussion about the weapon, hence it is prayed to remit the matter to the trial court to rectify the miscarriage of justice.

3. The revisional powers of the High Court in a judgment of acquittal was considered by the apex court in **Venkatesan V. Rani & Anr. 2013 (3) KLJ 693** para 7 held as follows;

“ 7. The above consideration would go to show that the revisional jurisdiction of the High Courts while examining an order of acquittal is extremely narrow and ought to be exercised only in cases where the Trial Court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Re-appreciation of evidence is an exercise that the High Court must refrain from while examining

an order of acquittal in the exercise of its revisional jurisdiction under the Code. Needless to say, if within the limited parameters, interference of the High Court is justified the only course of action that can be adopted is to order a re-trial after setting aside the acquittal. As the language of Section 401 of the Code makes it amply clear there is no power vested in the High Court to convert a finding of acquittal into one of conviction.”

4. In an earlier decision reported in ***Vimal Singh V. Khuman Singh (1998) 7 SCC 223*** held as follows;

“9. Coming to the ambit of power of the High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the

issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Subsection (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial.”

5. Section 401(1) of the Code of Criminal Procedure confers the High Court all the powers of Appellate Court by Sections 386, 389, 390 and 391. The object of conferring revisional power on the High Court is to clothe the highest court in a state with a jurisdiction of general supervision and superintendence in order to correct the grave failure or miscarriage of justice arising from the erroneous or defective orders. The error or a defect may arise from the misconception of law, irregularity of procedure, misreading

of evidence, misapprehension or misconception about law or facts, mere perversity or undue hardship or leniency. The above revisional power is discretionary one and there is no vested right of revision in the sense, when there is vested right mentioned in appeal. In an appeal, the appellant is given a statutory right to demand adjudication upon a question of law or question of fact or of both. But in a revisional jurisdiction, the appellant has no such right, what so ever right beyond the right bringing in a case to the notice of the court, it is for the court to interfere in exceptional cases whether it seems to have some real and substantial injustice has been done.

6. The learned Public Prosecutor appearing for the first respondent, and the learned counsel appearing for the respondents 2 to 4 contended that there was no evidence for fresh consideration. There is no consistent version with regard to the occurrence and it is doubtful. The injured was removed in a bus, but subsequently in a car, which was contradicted by respondent 2 to 4 before court. The evidence in Ext.P1 itself is sufficient to disbelieve the

evidence of PW1. No reasons are stated for remanding the matter for fresh consideration.

7. In view of the contention made by the revision petitioner, I have gone through the oral testimony of PW1. His evidence shows that on 22.02.2000 at 4.30 am when he reached near Veeranacavu School Gate, A1 to A3 wrongfully restrained him, A1 assaulted with a crow bar, A2 beat with a bamboo stick and A3 threw a stone against him, as a result, he sustained injuries. A3 also beat him. He fell down and taken by Nesan, Madhusoodanan and Isin. Sasidharan Nair and his son also came there. They gave water and thereafter sent him in a bus. Nesan, Isin and Madhusoodanan accompanied him and hired a taxi from there and removed him to Government Taluk Hospital Neyyattinkara. After the incident, the accused ran away. For that he gave P1 statement. While giving Ext.P1 statement, he stated that there were four persons. But subsequently he rectified it. He admitted that there was a dispute with regard to public road which is passing near the side of his property. The weapon used by the accused were

also thrown at the place of occurrence itself. Analyzing the evidence of PW1 and PW6, it is true that PW1 sustained injuries and he was treated at Government Taluk Hospital, Neyyattinkara. The name of the aggressors were not mentioned in Ext.P6. The independent witnesses PW2, PW3 and PW4 narrated the incident. The presence of PW2 was doubted by the trial court. According to PW2, while he was proceeding to Medical College Hospital, Trivandrum for obtaining the disability certificate, he witnessed the incident. The injured was removed to the hospital in a bus with the help of Sasidharan Nair and Madhusoodanan and from there, he was removed to taluk hospital, Neyyattinkara in a car from Kattakada KSRTC bus stand.

8. It is better to notice the injuries sustained by PW1. Ext.P6 is the wound certificate issued by PW8, Dr.M.J.Joy. He deposed that on 22.02.2000 at 05.45 am, he treated one Vijayakumaran Nair at Taluk Hospital Neyyattinkara and issued Ext.P6 certificate. In Ext.P6, it is detailed that:

- “1. Contused very deep lacerated wounds on right side of frontal region extending to forehead size-7 cm x 1 cm

2. Another contused lacerated wound on left side of forehead - size 2.5 cm x .5 cm
3. Lacerated wound on posterior aspect of left ear - size 2.5 cm x 5 cm
4. Crepitation and tenderness on distal $\frac{1}{2}$ of right forearm Fracture ulna
5. Multiple extensive beat marks on back, right arm
6. Small lacerated wound in 3rd web space
7. Contusion distal phalanx of left middle finger "

9. Another occurrence witness PW4 deposed that on the date of incident, he was riding a motor bike and on reaching Veerannacavu School gate, he heard a hue and cry in front of the school gate and saw 3- 4 persons running to that place. He stopped the motor bike and arrived at the place of occurrence. At that time, he saw the assault by A1 to A3. But he admitted that he did not accompany PW1 after the incident. He sent him to the hospital in a bus and proceeded to his work place. Therefore, the evidence of PW4 has some improbability. PW5, another occurrence witness was given up by the prosecution. The learned counsel appearing for the revision petitioner contended that he is a material witness and non-examination of that witness affects the credibility. He was

given up in a callous manner which needs interference. On analysing the ocular evidence of the prosecution witness, specific reasons were not stated by the trial court for discarding it. There was non-consideration of valid evidence of PW1, PW2, PW6 and in Ext.P6 which resulted in misreading of evidence.

10. The apex court in **Pratap V. State of U.P. 1973 SCC (Crl.) 496** held that:

“The object of conferring revisional power on the High Court is to clothe the highest court in a state with a jurisdiction of general supervision and superintendence in order to correct the grave failure or miscarriage of justice arising from the erroneous or defective orders. The error or a defect may arise from the misconception of law, irregularity of procedure, misreading of evidence, misapprehension or misconception about law or facts, mere perversity or undue hardship of leniency.”

11. The learned counsel also relied a decision in **Jagannath Choudhary and Ors. V. Ramayan Singh and Anr. AIR 2002 SC 2229**, in which it is held that:

“The extent of the jurisdiction of the High Court in the matter of interfering in revision against an

order of acquittal has been considered by this Court on a number of occasions. In *D Stephens V. Nosibolla*, 1951 SCR 284: (AIR 1951 SC 196), this Court observed:

The revisional jurisdiction conferred on the High Court under S.439 of the Code of Criminal Procedure is not to be lightly exercised when it is invoked by a private complainant against an order of acquittal, against which the Government has a right of appeal under S.417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower Court has taken a wrong view of the law or misappreciated the evidence on record.”

12. In order to conserve the powers of High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence, the acquittal passed by the trial court is to be set aside is the only remedy. This direction invoking is to see that the subordinate criminal courts do not abuse the powers vested in them and render justice to the victims in a crime.

13. In the result, the acquittal passed by the trial court is set aside and the matter is remitted to the trial court for fresh hearing. Since the incident was occurred 15 year back, it need not summon PW5. Hence the lower court is directed to hear the matter afresh and dispose the case within six months from the date of receipt of this judgment. A1 to A3 are directed to appear before court on 17.08.2015.

This revision petition is allowed.

STK

Sd/-
P.D. RAJAN,
JUDGE

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P.A. TO JUDGE