

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 762 of 2004 ()

AGAINST THE JUDGMENT IN CC 520/2001 of J.M.F.C. - I, CHALAKUDY

REVISION PETITIONER(S)/DEFACTO COMPLAINANT:

**NIZAM S/O. ABDUL SALAM, AGED 42 YEARS,
KUZHIVILA VEEDU, AYIROOR P.O., VIA VARKALA,
TRIVANDRUM DISTRICT.**

BY ADV. SRI.S.SUDHISH KUMAR

RESPONDENT(S)/ACCUSED NO.1 TO 4/STATE:

- 1. SIDDIK, S/O. ABDUL VAHEED,
KUNNUMPURATH VEEDU, KULATHARA,
ELAKAMON DESOM,
AYROOR VILLAGE.**
- 2. SHIBU S/O. ABSEER, SHIBU NIVAS, DO. DO.**
- 3. KALEED S/O. NIZAM, NIZAM MANZIL, DO.**
- 4. NAZAR S/O. MUHAMMED KANNU,
PANANTAZHIKOM VEEDU, DO. DO.**
- 5. STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

**R1 BY ADV. SRI.C.R.SIVAKUMAR
R5 BY PUBLIC PROSECUTOR SRI. N. SURESH**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07-
12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.762 of 2004

Dated this the 7th of December 2015

ORDER

Revision petitioner, who is the defacto complainant in C.C.520/01 on the file of the Judicial First Class Magistrate, Varkala challenges the judgment of acquittal for offences under Sections 143, 447, 323 r/w 149 IPC. The accused were charge-sheeted by Varkala Police. The charge against them was that on 25.02.01 at 2.00 am, accused trespassed into the property of Nizam after covering their face with towel. He caught hold of one of the accused, he pushed Nizam and left place and thereby committed the offence. To prove the allegation, prosecution examined PW1 to PW4 and marked Exts. P1 and P2. The accused also examined DW1 in the trial court. After analysing the evidence, trial court acquitted the accused. Being aggrieved by that the defacto complainant approached this court with this revision petition.

2. The object of conferring revisional power to the High Court is to correct grave miscarriage or failure of justice arising from erroneous or defective orders. While exercising this power, it is justified only to set right grave failure of justice and not merely to rectify every error. The fact that the lower court has taken a wrong view of law or misapprehended the evidence on record cannot be a reason to interfere unless it has resulted in grave miscarriage of justice. The revisional jurisdiction is supervisory jurisdiction to find out the illegality, irregularity in the order or sentence or proceedings of the Court below.

3. In the trial court, PW1 was examined as occurrence witness. The evidence of PW1 shows that, on 25.02.01, at 2.00 am, he heard a sound and woke up and saw 5 persons standing in front of him by covering their face. He caught one of them and identified his name as Siddik. When he identified this Siddik, others escaped from the clutches of PW1 by pulling him back. The dhoti and chappals were abandoned by the accused and he

identified the accused in the light of the vehicle. PW2, the wife of PW1 supported the evidence of PW1. PW3, who is another occurrence witness did not support the prosecution case. The trial court analysed the evidence, in which it was found that sufficient materials were not available in the trial court to convict the accused. There was no independent corroboration to the alleged story. It is the primary responsibility of prosecution to prove the case beyond reasonable doubt.

In order to attract offence under the unlawful assembly, the participation of five persons has to be proved by the prosecution. Moreover, prosecution has to prove that the unlawful assembly assaulted him and PW1 sustained injuries in the incident. It is for the prosecution to prove the trespass to attract an offence under Section 447 IPC. In the absence of proof beyond reasonable doubt, the trial court acquitted the accused. I find no illegality in the order of acquittal passed by the trial court. There is no material in this case for a conviction. The trial court appreciated the evidence in the right perspective. I

found no illegality to invoke the revisional jurisdiction.
There is no merit in this revision petition and it is
dismissed accordingly.

STK

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE