

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

Crl.Rev.Pet.No. 760 of 2006

CC 587/2003 of J.M.F.C.-II,PERINTHALMANNA

REVISION PETITIONER/DEFACTO COMPLAINANT:

NABEESA PUTHOOR, AGED 43 YEARS,
D/O.KUNJI MOHAMMED, PUTHOOR HOUSE, PATHAKKARA
PERINTHALMANNA.

BY ADV. SRI.P.SAMSUDIN

RESPONDENT(S)/ACCUSED & STATE:

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1. RAYIN @ BAPPUTTY S/O.MOHAMMED @ KUNHAPPU
PATHARI VEEDU, PATHAYIKKARA, PERINTHALMANNA.
 2. UMMUSALMA @ UMMU,
W/O.MOHAMMED @ KUNHAPPU, PATHARI VEEDU, PATHAYIKKARA
PERINTHALMANNA.
 3. SOUDATH, S/O.MOHAMMED @ KUNHAPPU,
PATHARI VEEDU, PATHAYIKKARA, PERINTHALMANNA.
 4. STATE OF KERALA, REPRESENTED BY
S.I. OF POLICE, PERINTHALMANNA, THROUGH
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY SRI.C.M.KAMMAPPU
PUBLIC PROSECUTOR SMT. BINDU GOPINATH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 07-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

RAJA VIJAYARAGHAVAN.V. J

Crl.R.P.760 of 2006

Dated 7th August, 2015

ORDER

1.The instant revision is preferred by the petitioner challenging the order of acquittal passed in C.C.No.587 of 2003 on the file of the Judicial Magistrate of First Class-II, Perinthalmanna. The said case was charge sheeted by the Sub Inspector of Police, Perinthalmanna, alleging commission of offence punishable u/s 498(a) r/w S.34 of the IPC at the instance of the petitioner herein. The accused in the said case are the husband, mother-in-law and sister-in-law of the petitioner.

2.The gist of the allegation is that the petitioner married the 1st respondent on 5.3.1983 and from the beginning of her marital life till 18.5.2002, the

1st respondent being the husband of the petitioner and respondents 2 & 3, being the mother and sister of the 1st respondent, subjected the petitioner to cruelty both mentally and physically by demanding more gold ornaments and cash, apart from the ornaments and cash given at the time of marriage. On these allegations it was alleged that the respondents herein have committed the offence punishable u/s 498(a) of the IPC.

3.The investigation was conducted by PW9 and it was PW10 who laid the charge sheet before the jurisdictional Magistrate. In order to prove the case of the prosecution, PW1 to PW10 were examined and Exts.P1 to P5 were marked. After the close of prosecution evidence, incriminating materials arising out of the prosecution evidence were put to the accused u/s 313(1)(b) of the Cr.P.C. They denied

the circumstances arising against them and maintained that they were innocent. No evidence was adduced by the defence. The learned Magistrate, on an appraisal of the oral and documentary evidence produced on the side of the petitioner, came to the conclusion that the evidence let in by the prosecution to prove the alleged acts of guilt was unreliable so as to enter a finding of guilt as against the accused. On that ground it was held that the prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubt and the accused were acquitted u/s 248(1) of the Cr.P.C. It is the above order which is under challenge in this Revision Petition.

4.I have heard Sri.P.Samsudin the learned counsel appearing for the petitioner, the learned counsel appearing for the respondents 1 to 3 and also the

learned Public Prosecutor.

5.It is evident that the marriage between the petitioner and the 1st respondent had taken place on 5.3.1983. There resided together for about 20 years and it was thereafter that Ext.P1 complaint was preferred before the jurisdictional Magistrate alleging that respondents 1 to 3 had subjected her to cruelty. Before the learned Magistrate, the petitioner was examined as PW1 and her sons who were aged 20 years and 17 years respectively were also examined as PW2 and 3. The father of PW1 had given evidence as PW5. The learned Magistrate in paragraph 11 of the judgment had held that the evidence of PW1 to PW5 does not appear to be trustworthy. It was further held that no independent evidence has been adduced by the prosecution to prove the alleged acts of cruelty by the accused.

6.It has to be borne in mind that the marriage was solemnized sometime in the year 1983 and more than three decades have elapsed. Children have all grown up and the petitioner as well as the 1st respondent have also gone forward in their life. Admittedly, they are residing separately at least from 2002 onwards on which date the instant complaint was preferred. If the petitioner is in any way aggrieved by any of the acts of the 1st respondent or if she has any new cause of action under law, it is for the petitioner to approach the appropriate forum for obtaining relief. I do not think that interest of justice will be served by reigniting this complaint and directing the parties to appear before the Court and to undergo an ordeal of trial. More over, this Court while sitting in revisional jurisdiction against an order of acquittal passed by

the learned Magistrate will not be justified in interfering with the finding of fact entered into by the learned Magistrate unless the same is perverse. After going through the impugned judgement I am of the considered view that the judgement was passed on a proper appreciation of facts and law. In view of the above, I do not think that there is any reason or justification for this Court to interfere with the impugned order.

7.In the result, the Revision Petition is dismissed.

Sd/-

RAJA VIJAYARAGHAVAN.V.
Judge

MrCS

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P.S.ToJudge