

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

Crl.Rev.Pet.No. 238 of 2007 ()

AGAINST THE JUDGMENT IN CC 625/2001 of J..F.M.C.-I, KANJIRAPPALLY

REVISION PETITIONER(S)/DEFACTO COMPLAINANT:

**RADHAMANIAMMA, W/O.JANARDHANAN NAIR,
VAMMATTATHIL HOUSE,
VAZHOOR VILLAGE, KOTTAYAM.**

BY ADV. SRI.LIJI.J.VADAKEDOM

RESPONDENT(S)/ACCUSED 1 TO 7 AND STATE:

- 1. GOPALAKRISHNAN NAIR,
EDAKKARA HOUSE, VAZHOOR VILLAGE.**
- 2. G.KARUNAKARAN NAIR,
KAROTTU VADAKKETHIL HOUSE, VAZHOOR VILLAGE.**
- 3. RADHAKRISHNAN NAIR,
KIZHAKKEDATH HOUSE, VAZHOOR VILLAGE.**
- 4. GANGADHARAN NAIR,
MAMBAZHA HOUSE, VAZHOOR VILLAGE.**
- 5. PURUSHOTHAMAN NAIR,
KIZHAKKADATHU KAROTTU HOUSE, VAZHOOR VILLAGE.**
- 6. BIJU GOPALAN, KAROTTU VADAKKEL HOUSE,
VAZHOOR VILLAGE.**
- 7. V.N.MANOJ, VATHALLOOR HOUSE,
KODUNGOOR BHAGAM, VAZHOOR VILLAGE.**
- 8. STATE OF KERALA, REPRESENTED BY
ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.**

**R1&3-R7 BY ADV. SRI.SHAJI THOMAS
ADV. SRI.B.RAJESH (KOTTAYAM)
R2 BY PUBLIC PROSECUTOR SRI. N. SURESH**

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl. R.P. No.238 of 2007

Dated this the 15th day of September, 2015

ORDER

The revision petitioner, who is the complainant in C.C.625/01 on the file of Judicial First Class Magistrate Court-1, Kanjirappally for offence punishable under Sections 143,147, 149, 447 and 427 IPC. Her case is that, accused formed themselves into an unlawful assembly with weapons like axe, spade, pic-axe, alavenku and iron bar and in furtherance of their common object, trespassed into the property in Re.Sy.No.178/05 and 178/06 in Block No.23 in Vazhoor Village and demolished the western boundary Kayyale at a length of 71 metres and destroyed teak trees, anjili trees and thereby sustained a loss of Rs.35,000/- to her. In this incident, PW1 filed a complaint before Judicial First Class Magistrate-1, Kanjirappilly and it was forwarded to Sub Inspector of Police, Pallickathodu Police Station for investigation under Section 156(3) Cr.P.C. After completing investigation he laid charge before Judicial First Class Magistrate, Kanjirappally.

2. To prove the allegation, the complainant examined PW1 to PW6 and marked Exts.P1 to P5. Ext.D1 was marked from the side of the accused during examination. The incriminating circumstances brought out in evidence were denied by the accused while questioning them. He did not adduce any defence evidence in the trial court. The trial court after sifting and weighing the evidence on record, acquitted the accused under Section 248(1) Cr.P.C. Being aggrieved by that, complainant approached this court with this revision petition.

3. The main arguments put forward by the learned counsel appearing for the revision petitioner was that, there is a mistake committed by the trial court in mentioning the date of occurrence of the incident. When a wrong appreciation is made by the trial court, it is a good ground to invoke revisional jurisdiction. The respondents strongly resisted the above contention and contended that *prima facie* no material are produced against the respondents and no reason to interfere in the matter.

The revisional jurisdiction is supervisory jurisdiction to find out the illegality, irregularity in the order or sentence or proceedings of the Court below. The object of conferring revisional power to the High Court is to correct grave miscarriage 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.

4. 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.

5. In this backdrop, I have considered the relevant ground put forward by the learned counsel. The complainant was examined in the trial court as PW1. Her evidence shows that accused trespassed into the property on 17.8.01 and demolished the boundary. But no overt act is specifically alleged against the accused to attract the offence, on the other hand, a general allegation was made against the accused. The trial court considered this

aspect and opined that in Ext.D1, cause of action was mentioned as 13.08.01. But in Ext.P1, the the alleged incident occurred on 17.08.01 at 2 pm. There is no ambiguity in the matter. But the cause of action started prior to 17.08.01. The counsel contended that the appreciation of the evidence of PW1 in para 2 of Ext.D1 is not a ground for acquitting the accused 1 to 7. But a perusal of the evidence, no materials were produced in the trial court to prove the overt act of these persons. PW2, PW3 and PW4 are the other occurrence witnesses also not alleged any the specific overt act to prove the offence of trespass and mischief.

6. As per Ext.D1, 4 persons were arrayed as defendants. But the other accused mentioned in the prosecution case were not arrayed as parties in the civil suit. A perusal of records, it is found that in Ext.D1, 4th defendant was arrayed as a representative capacity for all persons in the 10th ward of Vazhoor Gramapanchayath. The specific evidence with regard to the alleged mischief has also to be completed and proved by the prosecution.

In an offence under Section 447 IPC, the prosecution has to prove that accused entered into or upon the property in the possession of another persons with intent to commit an offence or to intimidate, insult or annoy any person or having unlawful entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit 'criminal trespass'. Even though, PW1 stated that they trespassed into the property, alleged ingredients were not proved by the prosecution to attract an offence under Section 447 and 427 IPC. No evidence is found in her statement that they have annoyed or intimidated. But she stated that they committed mischief and sustained loss of Rs.35,000/-, for that also, no offence. In a crime, it is the duty of the prosecution to prove the ingredients of an offence. When there is no evidence to attract that offence, it is difficult to convict the accused on the basis of any inferences. The trial court considered those aspect and acquitted the accused. I find no illegality in the judgment

of the trial court.

In such a circumstance, it is difficult to invoke revisional jurisdiction and interfere in the findings recorded by the learned Magistrate. There is no merit in this revision petition and it is dismissed accordingly.

STK

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P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE