

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

Crl.Rev.Pet.No. 253 of 2007 ()

AGAINST THE JUDGMENT IN CC 809/2004 of J.M.F.C.-II, KOTTARAKKARA
DATED 26-10-2006

REVISION PETITIONER(S)/DEFACTO COMPLAINANT:

LEELA KUMARI @ LATHAKUMARI
D/O.VELAYUDHAN NAIR, HILL VIEW, THACHONAM MURI
KUMMIL VILLAGE, KADAKKAL, KOLLAM.

BY ADV. SRI.B.MOHANLAL

RESPONDENT(S)/ACCUSED AND STATE:

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1. SUKUMARAN NAIR, S/O. NARAYANAN NAIR,
CHARUVILA PUTHEN VEEDU, KUMMIL MURI, KUMMIL VILLAGE
KADAKKAL, KOLLAM.
 2. MADHAVAN NAIR, S/O.NARAYANAN NAIR,
CHARUVILA PUTHEN VEEDU, KUMMIL MURI, KUMMIL VILLAGE
KADAKKAL, KOLLAM.
 3. MURALEEDHARAN NAIR,
S/O.NARAYANAN NAIR, CHARUVILA PUTHEN VEEDU
KUMMIL MURI, KUMMIL VILLAGE, KADAKKAL
KOLLAM.
 4. BHASKARAN NAIR, S/O.NARAYANAN NAIR,
CHARUVILA PUTHEN VEEDU, KUMMIL MURI, KUMMIL VILLAGE
KADAKKAL, KOLLAM.
 5. ABHILASH, S/O.SREEDHARAN NAIR,
CHARUVILA PUTHEN VEEDU, KUMMIL MURI, KUMMIL VILLAGE
KADAKKAL, KOLLAM.
 6. STATE OF KERALA REPRESENTED BY THE
SUB INSPECTOR OF POLICE, KADAKKAL POLICE STATION
KOLLAM DISTRICT THROUGH THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R6 BY PUBLIC PROSECUTOR SRI. N. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 08-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.253 of 2007

Dated this the 8th day of September, 2015

ORDER

The revision petitioner, who is the defacto complainant in C.C.No.809/2004 on the file of Judicial First Class Magistrate-II, Kottarakara, challenges the judgment of acquittal for offence u/ss.341, 323, 447, 427 and 506(i) r/w.34 IPC.

2. The revision petitioner 's case is that she is the owner of 50 cents of property in Sy.No.448/1-179 of Kummil Village and the property was covered with boundaries on all the four sides. On 24.12.2002 at about 8 a.m., the accused 1 to 5 unlawfully assembled with dangerous weapon like spade, pick axe, lance and dagger and criminally trespassed into her

property and constructed a pathway through the eastern side of the property. They also excavated the sand from her property by using JCB and when she restrained the attempt of the accused, they tried to prevent her, then the first accused threatened to cause death by showing a lance and 1st and 2nd accused caught hold of her and the 3rd accused inflicted blow on left forearm. Thereafter, she pushed down and dragged into her house and criminally confined in the house. Thereby, the accused have committed the offences. For this, a complaint was filed by the complainant in the Judicial First Class Magistrate-II, Kottarakara, which was forwarded to the 6th respondent for investigation and a crime 87/2003 was registered. Subsequently, the case was referred by the Police. Against that, she filed a protest complaint.

3. To prove the offence, the revision petitioner examined PW1 to PW5 and marked Exts.P1 and P2 as documentary evidence. The incriminating circumstances brought out in evidence were denied by the accused while questioning them u/s.313 Cr.P.C. Ext.D1 was marked on the side of the accused. The trial Court, after analysing the evidence, acquitted the accused. Being aggrieved by that judgment, the defacto complainant approached this Court with this revision petition.

4. The learned counsel appearing for the revision petitioner submitted that the trial Court failed to appreciate the evidence adduced by PW1 to PW3 in the correct perspective. Therefore, the criminal activities committed by the respondents were not discussed in the judgment. The learned counsel submitted that the matter

may be remitted to the trial Court for fresh consideration and for rectifying the illegality by invoking the revisional jurisdiction.

5. The learned Public Prosecutor submitted that the trial Court appreciated the evidence and there is no reason to re-appreciate the evidence by the Court invoking revisional jurisdiction.

6. The revisional power is conferred to the High Court with a jurisdiction of general supervision in order to correct miscarriage of justice arising from erroneous or defective orders. While exercising this power, it is justified only to correct grave failure of justice not 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 injustice. The revisional jurisdiction is supervisory jurisdiction to find out the illegality, irregularity in the order or sentence or proceedings of the Court below.

7. In this backdrop, I have considered whether the Court below has committed any illegality in appreciating the evidence of the defacto complainant. The defacto complainant was examined as PW1. Her evidence shows that A1 to A4 are brothers of her father and 5th accused is her nephew. Her evidence shows that a civil dispute is pending as O.S.No.411/2002 in the Munsiff Court . She filed an interlocutory application to restrain the accused from trespassing into her property, which was dismissed by the Munsiff Court and the Appellate Court also dismissed her request. According to PW1, she obtained

property by way of gift deed executed by her father in 1995 and A1 to A4 also having shares over the property consisting of 5 to 6 acres. Her grandmother is residing in the family house. It is clear from her evidence that a pathway leading from Kallara-Tholikkodu road to the family house is the disputed area and she contended that there is no such pathway. A civil dispute is pending with regard to that pathway.

8. Her contention was that A1 to A5 on 24.12.2002 at 8 a.m., criminally trespassed into her property and A1 threatened her to cause death by showing a lance. When she prevented their attempt, they pushed down and dragged on to the floor about half mile and locked in her house. PW2, who is the mother of PW1 supported the above evidence of PW1. PW3, who is the independent

witness, also supported the case and he deposed that the accused destroyed the eastern boundary of PW1 by using JCB. Even though she deposed so, she has not produced any document to prove the identity of the property. When there is allegation of criminal trespass, PW1 has to prove that the accused entered into or upon property in possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property or having lawfully 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. No documentary evidence has been adduced by PW1 to prove her title of the disputed property. Therefore, the defacto complainant failed to prove the criminal trespass.

9. I have considered what are the injuries sustained to the defacto complainant in the incident. According to PW4, on 25.12.2002, while he was working as Assistant Surgeon, General Hospital, Kadakkal, on that day, at 4.15 p.m., he examined PW1 with the allegation that the injuries of pain and tenderness back, body pain and pain on the shoulder. He further deposed that the alleged cause was inflicting blow on her by using hand at 8.30 a.m. on 24.4.2002. The reason for delay in approaching the PW4 was not explained by PW1 and the fact that how much time she was retained in the confinement was also not disclosed. If she was dragged through the property, there must be chance for causing abrasion to those portion touching on the land. In the absence of any external injury, no evidence has been supported to prove the allegation of

PW1.

10. The Sub Inspector of Police, Kadakkal Police Station (PW5) registered Crime No.87/2003 on the basis of complaint forwarded from Judicial First Class Magistrate -II, Kottarakkara and Ext.P2 is the FIR. Subsequently, the case was referred as false. He admitted that there was a civil dispute with regard to the pathway and PW1 sustained injury in connection with the scuffle while opening a pathway and O.S.411/2002 is pending before Munsiff Court. Ext.D1 is the copy of the order in I.A.No.2353/2002, which was filed by the complainant restraining from trespassing into the property. The trial Court, after analysing the oral and documentary evidence adduced by PW1, concluded that the complainant failed to establish the alleged offence against

the accused and acquitted them. I do not find any illegality in the above judgment. There is no merit in this revision petition and it is dismissed accordingly.

P.D. RAJAN, JUDGE.

acd

