

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

Crl.Rev.Pet.No. 1101 of 2002 ()

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AGAINST THE JUDGMENT IN CC NO.586/1998 of JUDICIAL FIRST CLASS
MAGISTRATE, KOLENCHERRY DATED 27-03-2002
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PETITIONER(S)/DEFACTO COMPLAINANTS (PW1 & 2) :

- 1. N.V.BABY, S/O.SIMON VARGHESE,
PERIKKAMATTATHIL HOUSE, MANEED VILLAGE,
MOOVATTUPUZHA TALUK.**
- 2. C.J.ALIAS S/O.JOHN, CHERUKARA HOUSE,
MANEED VILLAGE, MOOVATTUPUZHA TALUK.**

**BY ADVS.SRI.N.SUKUMARAN
SRI.S.SHYAM
SRI.BOBBI MATHEW KOOTHATTUKULAM
SRI.LATHEESH SEBASTIAN**

RESPONDENT(S)/ACCUSED NOS.1 TO 6, 8, 9 AND STATE :

- 1. BIJU SIMON, S/O.SIMON, KALLIYIL VEETIL,
EZHAKKARANADU KARA, MANEED VILLAGE.**
- 2. ROY, S/O.ALIAS, THEKKEKARAYIL VEETIL,
DO--- DO--.**
- 3. KURIAKOSE, S/O.MICKLE,
VADAKKANEDATHU VEETIL, --DO-- -DO-.**
- 4. BIJU VARGHESE, S/O.VARGHESE,
MUDAYAMKATTIL VEETIL, -DO- -DO-.**
- 5. REJI, S/O.ALIAS, THEKKEKARA VEETIL,
DO- -DO-.**
- 6. ALIAS, S/O.JOSEPH, -DO- -DO-.**
- 7. THOMAS, S/O.VARGHESE, VADAKKANEDATHU VEETIL,
DO- -DO-.**

Contd...2/-

AMV

Crl.Rev.Pet.No. 1101 of 2002 ()

- 8. VARGHESE, S/O.THOMAS.
-D0- -DO-.**
- 9. SUB INSPECTOR OF POLICE,
RAMAMANGALAM POLICE STATION,
RAMAMANGALAM, MUVATTUPUZHA TALUK.**
- 10. STATE OF KERALA, REP.BY THE DIRECTOR OF
PUBLIC PROSECUTION,
HIGH COURT OF KERALA, COCHIN - 31.**

**R9 & R10 BY SRI.JIBU P. THOMAS, PUBLIC PROSECUTOR
R1 TO R8 BY ADV. SRI.T.D.ROBIN**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 26-05-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

AMV

K.HARILAL, J.

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Crl.R.P.No. 1101 of 2002 ()

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Dated this the 26th day of May, 2015

ORDER

The revision petitioners are the de facto complainants in C.C. No.586 of 1998 on the files of the Judicial First Class Magistrate Court, Kolencherry. The respondents were prosecuted for the offences punishable under Sections 143, 147, 148, 447, 427, 294(b), 506(ii) read with Section 149 of the Indian Penal Code.

2.The prosecution case is that, the accused as a result of their enmity towards CW1 and others as he has not given his property for widening the Panchayat road from Ayurveda Asupathripadi-Vettithara Ottucompany road in furtherance of their common object of trespassing into their property and causing loss and intimidation him, formed themselves into an unlawful assembly armed with deadly weapons such a chopper, iron rod, spade etc., and in between 10.30 p.m. on 16.04.1998 and 5 p.m. on 17.04.1998, trespassed into the de facto

complainant's property situated in Maneed village and called obscene words at C.Ws.4 and 5 and intimidated them and destroyed the compound wall of de facto complainant's property and also cut and removed coconut trees, jathi and pepper causing loss to the tune of Rs.4 Lakhs to CW1 and others. Thereby the accused are alleged to have committed the offences under Sections 143, 147, 148, 447, 427, 294(b), 506(ii) r/w Section 149 of IPC.

3.To prove the prosecution case P.Ws.1 to P.W.7 were examined and Exts.P1 to P4 were marked. D.W.1 was examined and Ext.D1 was marked for the defence side.

4.After considering evidence on record the trial court acquitted of the accused on two grounds. The definite case of the de facto complainant is that the accused trespassed over the property owned and enjoyed by them and committed the offence as alleged against the accused. No document had been produced to show that the said property owned and possessed by the de facto

complainant. The secretary of Maneed Panchayath was examined as DW1. He gave evidence that the Panchayath is the owner of Ayurveda Asupathripady-Vettithara Ottucompany road and to prove the same produced D1 register. The ownership of the property can be proved only by production of title deed. Unless and until the ownership is proved no offence can be alleged against the accused on the basis of the averments in the complaint filed by them, particularly, when the Panchayath approved the ownership over the road. Secondly the prosecution has failed to approve the identity of the accused beyond doubt. P.Ws. 1 and 4 gave specific evidence before the court that they know the accused as they are neighbours. That means P.Ws.1, 2 and 4 have previous acquaintance with the accused. But strangely enough neither in Ext.P1 complaint nor in Ext.P2 FIR the names of the accused are mentioned. Their specific case in the complaint was that 75 persons took part in the commission of offence. Had P.Ws.1 and 2 have seen the incident as deposed by them before the court, definitely they could have been

able to identify the persons, who have lead the alleged atrocity. This circumstance shows beyond doubt that they are not the occurence witnesses and they have not seen the alleged incident as alleged by the de facto complainant. When the offences are said to have been committed by more than 75 persons certainly the identity of the persons, who committed the alleged offence should have been proved beyond doubt. But the prosecution has miserably failed to prove the offence alleged against the accused beyond doubt. There is no illegality or impropriety in the findings, whereby the court below acquitted of the accused. I do not find any perversity in the appreciation of the findings and there is no reason warranting interference under the inherent jurisdiction of this Court. Therefore, this criminal revision petition will stand dismissed.

Sd/-
K.HARILAL,
JUDGE.

AMV/29/05/

/TRUE COPY/

P.A.TO JUDGE