

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

Crl.Rev.Pet.No. 494 of 2012 ()

AGAINST THE ORDER/JUDGMENT IN CRRP 49/2009 of THE COURT OF II
ADDITIONAL SESSIONS JUDGE, PALAKKAD DATED 23-08-2011

AGAINST THE ORDER/JUDGMENT IN CC 265/2007 of JUDICIAL FIRST CLASS
MAGISTRATE COURT, CHITTUR DATED 15-05-2009

REVISION PETITIONERS/RESPONDENTS 2 TO 6/ACCUSED 1 TO 5:

1. RAJAN, S/O.CHELLAN, AGED 47 YEARS, NADAKKAVU,
ETHANNUR, KODUVAYUR, CHITTUR TALUK,
PALAKKAD DISTRICT.
2. BALAKRISHNAN, S/O.SWAMINATHAN, AGED 40 YEARS,
MOOCHIKKAL HOUSE, KUMATTIPURA, ETHANNUR,
KODUVAYUR, CHITTUR TALUK, PALAKKAD DISTRICT.
3. ARUCHAMI, S/O.SANKU, AGED 34 YEARS, POOLAPARAMB
ETHANNUR, KODUVAYUR, CHITTUR TALUK,
PALAKKAD DISTRICT.
4. VENUGOPALAN, S/O.SANKU, AGED 28 YEARS,
POOLAPARAMB, ETHANNUR, KODUVAYUR,
CHITTUR TALUK, PALAKKAD DISTRICT.
5. MOHANAN, S/O.SANKU, AGED 28 YEARS, POOLAPARAMB,
ETHANNUR, KODUVAYUR, CHITTUR TALUK,
PALAKKAD DISTRICT.

BY ADVS.SRI.BINOY VASUDEVAN
SMT.P.G.BABITHA

RESPONDENTS/REVISION PETITIONER/DEFACTO COMPLAINANT & STATE:

1. SWAMINATHAN, S/O.NARAYANANKUTTY NAIR,
AGED 57 YEARS, 'KARTHIKA', ETHANNUR,
KODUVAYUR, CHITTUR TALUK, PALAKKAD DISTRICT-678 101.
2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
07-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.R.P.No.494 of 2012

Dated 7th April, 2015

ORDER

The revision petitioners are accused Nos.1 to 5 in C.C.No.265 of 2007 on the files of the Court of Judicial First Class Magistrate, Chittur. They were tried for offences punishable under Sections 143, 147, 148, 294(b), 427 and 506(ii) read with Section 149 of the Indian Penal Code. To bring home the charges against the revision petitioners prosecution has examined PW1. Non-bailable warrants issued against the defacto complainant (CW1) and CW2, the occurrence witness were returned un-executed with the report that they were elsewhere in Bangalore. Base on such submission by the learned prosecutor and the action in giving up the rest of the witnesses the prosecution evidence was closed. After evaluating the evidence of PW1 the trial court found that the revision petitioners are not guilty under any of the offences charged against them and they are acquitted under Section 248(1) of the Code of Criminal Procedure. The defacto complainant/the first respondent herein preferred Crl.R.P.No.49 of 2009 before the Court of Additional Sessions Judge-II, Palakkad challenging the propriety, correctness and legality of the

judgment of the learned Magistrate in C.C.No.265 of 2007. The learned Additional Sessions Judge allowed the revision petition and set aside the order of acquittal and restored C.C.No.265 of 2007 into the file. The accused/the revision petitioners herein were directed to be summoned and the learned Magistrate was directed to proceed further with the case and to try the same expeditiously after giving sufficient opportunity to the defacto complainant/first respondent herein to tender evidence in the case in support of the case of the prosecution. This revision petition has been filed in the said circumstances.

2. I have heard the learned counsel for the revision petitioners and also the learned Public Prosecutor.

3. Evidently, the learned Additional Sessions Judge carefully considered the judgment of the learned Magistrate which culminated in the judgment dated 15.5.2009 in C.C.No.265 of 2007 after perusing the lower court records. It was found that after hearing the prosecution and the defence charge for the offences referred above was framed by the learned Magistrate and the revision petitioners herein/accused denied the charge and pleaded not guilty and claimed to be tried. Thereupon, prosecution had examined PW1. Thereafter, non-bailable warrants were issued against CW1/the defacto complainant/first respondent herein and

CW2, the only occurrence witness and they were returned unexecuted with the report that they left for Bangalore and their whereabouts could not be gathered. True that the learned prosecutor given up the remaining witnesses and consequently, the evidence of the prosecution was closed. The learned Magistrate found that there was no incriminating evidence against the accused and consequently, the accused were found not guilty and acquitted under Section 248(1) Cr.P.C.

4. The defacto complainant/the first respondent herein contended before the learned Additional Sessions Judge that he was always available and had not left the station as stated in the judgment of the learned Magistrate. Further, it was contended that there was no justification to report that himself and CW2 left the place and their presence could not be secured. He had also taken up the contention that process issued from the court had been returned with false and wrong endorsement and that he was very much serious in prosecuting the case. The learned Additional Sessions Judge evidently, perused the certified diary extract of C.C.No.151 of 2004 pending before the same trial court in which the defacto complainant/the first respondent herein was all along appearing before the court. It was evidently during the said period that the police had returned the process against the defacto

complainant/first respondent herein as unexecuted due to non-availability. The said fact was considered in detail by the learned Additional Sessions Judge as is evident from the discussions against point Nos. 1 and 2 in the impugned judgment. It was found that the defacto complainant/first respondent herein was the first accused in C.C.No.151 of 2004 pending before the Judicial First Class Magistrate, Chittur itself and he had been physically present almost on all the hearing dates in between 25.1.2004 till 29.5.2009. C.C.No.265 of 2007 was disposed of by acquitting the revision petitioners herein/accused therein under Section 248(1) Cr.P.C. on 15.5.2009. On perusal of the impugned judgment the learned Additional Sessions Judge found that the trial court closed the prosecution evidence pursuant to the giving up of the remaining witnesses by the prosecution citing the reason that CW1/defacto complainant/first respondent herein and CW2 had shifted their residence and could not be procured on repeated coercive steps. It was in the said circumstances that the learned Additional Sessions Judge arrived at the finding that there had been deliberate misrepresentation by way of endorsement on the process issued against CW1/the defacto complainant/first respondent and CW2 therein. It is on total consideration and appreciation of such materials that the learned Additional Sessions Judge arrived at the finding that CW1/defacto complainant/first respondent herein and CW2 are quite available and in

such circumstances, closing the prosecution evidence without affording an opportunity to the defacto complainant/the first respondent herein led to miscarriage of justice and therefore liable to be set right. In the light of the circumstances as referred above the learned Additional Sessions Judge found that the mischief done by wrong endorsement on the process issued from the court virtually denied the defacto complainant/the first respondent herein who was the revision petitioner therein a chance to give evidence in his case and found substance in the said contention. It is to set right the said illegality that the learned Additional Sessions Judge set aside the judgment rendered by the lower court and remitted the matter for fresh trial from the stage of recording their plea on the charge. The question to be considered is whether the order passed by the learned Additional Sessions Judge in Crl.R.P.No.49 of 2009 is patently illegal warranting interference in exercise of the revisional jurisdiction. In the circumstances mentioned above, can it be said that the learned Additional Sessions Judge went wrong in holding that the acquittal of the accused led to the miscarriage of justice warranting an interference in exercise of revisional jurisdiction. In a case where the trial court wrongly shut down the prosecution evidence an interference by the revisional court with acquittal of the accused would be justified. There also cannot be any dispute regarding the position that when once it is found that the trial court did not adopt the proper

procedure or held the trial in a perfunctory manner the matter requires to be remitted for fresh consideration. It is not disputed before me that the two calendar cases viz., C.C.Nos.265 of 2007 and C.C.No.151 of 2004 were pending before the Court of Judicial First Class Magistrate, Chittur and they were taken up almost together or intermittently. The learned Additional Sessions Judge perused the certified extract of the diary of the trial court in C.C.No.151 of 2004 wherein CW1/defacto complainant/first respondent herein was an accused and it was observed that it would reveal that he was regularly appearing before that court. The said specific finding by the learned Additional Sessions Judge on perusal of the certified diary extract in C.C.No.151 of 2004 has not been disputed and in fact, the revision petitioners herein did not have a case that the said observation is not true to facts. The first respondent herein who was the accused in C.C.No.151 of 2004 was the defacto complainant in C.C.No.265 of 2007. There is no dispute with respect to the fact that the prosecution evidence in C.C.No.265 of 2007 was closed based on the statement of the learned Public Prosecutor appearing therein that CW1/defacto complainant/first respondent herein and CW2 were left the place and could not be traced out and it cannot be said to be the correct position of fact in the light of the discussion made by the learned Additional Sessions Judge after perusing the certified court diary extract in C.C.No.151 of 2004. When that be the position, the learned Additional

Sessions Judge was justified in arriving at the conclusion that some mischief was done in the matter of making wrong endorsement on the process issued by the court and owing to such reason that the first respondent/defacto complainant was denied a chance to give evidence in C.C.No.265 of 2007 whereon he was the defacto complainant. This certainly was an illegality rightable in exercise of revisional jurisdiction and very rightly interfered with by the learned Additional Sessions Judge to avert miscarriage of justice. In such circumstances, I am of the view that interfering with the order of the learned Additional Sessions Judge would result in miscarriage of justice. Certainly, interest of justice demands continuation of the trial in C.C.No.265 of 2007 after restoring the same into the file and its continuation from the stage where it was stopped. Thus, evidently, as per the impugned judgment the learned Additional Sessions Judge has only set right an illegality and therefore, I am of the view that interference with such order would defeat the very purpose of the revisional power vested with the Sessions Court. In the said circumstances, this revision petition is liable to fail and accordingly, it is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS