

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. 2044 of 2006 ()

AGAINST THE JUDGMENT IN CC 460/2002 of J.M.F.C., KODUNGALLUR

REVISION PETITIONER(S)/DEFACTO COMPLAINANT:

**SUDAKARAN,
S/o.ADIMA, ERUKATTIL HOUSE, ELAMVARAMCHIRA,
EDAMUTTOM, VALAPPAD,
THRISSUR DISTRICT.**

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT(S)/ACCUSED PERSONS:

- 1. SHAJI, S/o.RAMAKRISHNAN,
THANDASSERY, ELAMVARAMCHIRAYIL, EDAMUTTOM,
VALAPPAD, THRISSUR DISTRICT.**
- 2. RAMESH, S/O.KOCHUMON,
MULLAYIL HOUSE, ELAMVARAMCHIRAYIL, EDAMUTTOM,
VALAPPAD, THRISSUR DISTRICT.**
- 3. SAJI @ SAJAYA KUMAR,
S/O.SATHYADEVAN, VALIAPARAMBIL HOUSE,
ELAMVARAMCHIRAYIL, EDAMUTTOM, VALAPPAD
THRISSUR DISTRICT.**
- 4. RAJIN, S/O.RAJAN,
TUPRADAN HOUSE, ELAMVARAMCHIRAYIL, EDAMUTTOM,
VALAPPAD, THRISSUR DISTRICT.**
- 5. SANEESH, S/O.SATHYADEVAN,
VALIAPARAMBIL HOUSE, ELAMVARAMCHIRAYIL, EDAMUTTOM,
VALAPPAD, THRISSUR DISTRICT.**
- 6. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA**

R6 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

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

STK

P.D. RAJAN, J.

Crl.R.P.2044 of 2006

Dated this the 8th day of September, 2015

ORDER

Revision petitioner, who is the de-facto complainant in C.C.460/2002 of the Judicial First Class Magistrate, Kodungallur challenges the judgment of acquittal for offence under Section 143,147,148,323,324 r/w 149 IPC. The respondents are the accused in the above case. The case was charge-sheeted by the Sub Inspector of Police, Valappad under the above Section.

2. The prosecution allegation is that on 11.02.02, the accused formed themselves into an unlawful assembly armed with deadly weapons and in furtherance of the common object committed rioting, A1 voluntarily caused hurt to CW1 with an iron rod and A2 and A3 voluntarily caused hurt to CW1, A4 caught hold of CW2, thereby A5 caused hurt to CW2, thereby they committed the offence.

3. To prove the offence, prosecution examined PW1 to PW8 and produced Exts.P1 to P7 as documentary

evidence. The incriminating circumstances brought out in evidence were denied by the accused while questioning them under Section 313 Cr.P.C. The trial court after analyzing the evidence acquitted the accused. Being aggrieved by that, the injured who is the de-facto complainant in the trial court preferred this revision.

4. The counsel appearing for the revision petitioner contended that a wrong appreciation of evidence was made by the trial court, thereby acquitted the accused in the above case which is to be rectified by invoking the revisional jurisdiction. The delay was properly explained in the trial court. The injured had correctly identified by the accused and no reason to disbelieve the oral testimony of PW1 and PW3. Hence, he seeks interference to rectify the illegality.

5. The learned Public Prosecutor submitted that *prima facie* case is not made out against the accused in the above case, which was properly appreciated by the trial court. The accused in that case were PW1 and PW3. There is no consistent case for the prosecution for a

conviction and no medical evidence to prove the alleged offence. Therefore, no interference is necessary to invoke revisional jurisdiction.

6. The object of conferring revisional power to the High Court is to correct grave miscarriage or failure 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 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 miscarriage of justice. 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 context, I verified the judgment of the court below for ascertaining the illegality or irregularity committed by the court below. PW1 is injured in this case. According to PW1, the incident was occurred on 11.2.02 and the incident was reported at the police station only on

14.2.02. PW1 was not admitted in the hospital after sustaining serious injuries. The reason for the delay was also not recorded in the hospital. In the FI statement, the reason for the delay was not stated. The trial court considered the delay aspect and observed that no explanation was offered for the delay.

8. In this context, I have considered the oral testimony, the manner in which the incident occurred. According to PW1, 10 persons attacked him, out of which he disclosed the name of 6 persons, which was mentioned in Ext.P5 FIR. PW4 also deposed that PW1 and PW3 were restrained by more than 10 persons. The involvement of other accused were not traced out by the police or not stated by PW1 and PW3. As per Ext.P1 wound certificate, PW1 sustained only minor injuries. PW3 also sustained only minor injuries. It was observed by the court below that a counter case was pending against PW1 and PW3 alleging grievous injury to A1 and A2. Therefore, this case was registered after registering the case against the de-facto complainant by the police. The evidence of PW1 and

PW4 are inconsistent. According to PW1, when he cried, PW4 came and saved PW3. PW3 stated that injury was sustained during scuffle which probabalise the earlier story stated by A1 and A2 in the counter case. In a criminal trial, the burden is upon the prosecution to prove the ingredients of the offence alleged against the accused persons. The onus of proof always upon the prosecution and it never shifts to the accused. Analyzing the evidence of PW1 and PW2 the injured, the trial court observed that prosecution utterly failed to prove the case and the accused entitled to get the benefit of doubt. The delay was also not properly explained in the trial court. I find no illegality in the above judgment. In such circumstance, it is not necessary to invoke revision jurisdiction and this revision petition is dismissed accordingly.

STK

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PA. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE