

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

Crl.Rev.Pet.No. 2374 of 2006 ()

**AGAINST THE JUDGMENT IN Crl. APPEAL 163/2004 of ADDITIONAL DISTRICT &
SESSIONS COURT-I (ADHOC), PATHANAMTHITTA, DATED 14-06-2006.**

&

**AGAINST THE JUDGMENT IN CC 454/2001 of J.M.F.C.-II,
PATHANAMTHITTA, DATED 19-04-2004.**

REVISION PETITIONER(S):

- 1. GEORGEKUTTY, S/o. EASO THOMAS,
THENGUMTHOTTATHIL VEEDU, INDANADU, THELLIYOOR MURI,
EZHUMATTOOR, PATHANAMTHITTA DISTRICT.**
- 2. T.T.EASO @ THANKACHAN, S/O.EASO THOMAS,
THENGUMTHOTTATHIL VEEDU, INDANADU, THELLIYOOR MURI,
EZHUMATTOOR, PATHANAMTHITTA DISTRICT.**

BY ADV. SRI. N.P.PRAJEESH

RESPONDENT(S)/COMPLAINANT AND STATE:

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT. V.H. JASMINE.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
09-04-2015, ALONG WITH CRRP. 2665/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

K. RAMAKRISHNAN, J.

Crl.R.P.No.2374 of 2006 and
Crl. R.P.No.2665 of 2006

Dated this the 9th day of April, 2015

ORDER

Crl.R.P.No.2374/2006 was filed by accused Nos. 1 and 3 in C.C.No.454/2001 and Crl.R.P.No.2665/2006 was filed by the original second accused in C.C.No.454/2001, but subsequently tried as sole accused in C.C.224/2004, both on the file of the Judicial First Class Magistrate Court-II, Pathanamthitta. The revision petitioners in both these cases were charge-sheeted by the Sub Inspector of Police, Koipuram police station, in Crime No.133/2001 of that police station along with other persons alleging offences under Section 353, 506(2) read with Section 34 of the Indian Penal Code.

2. The case of the prosecution in nut shell was that, on 30.05.2001 at about 02.45 p.m., the accused

persons in furtherance of their common intention used criminal force against PWs 2 and 3, in order to deter them from discharging their official duties and the incident happened at Indanad in Ezhumattoor Village at the time when PWs 2 and 3 had executed the arrest warrant issued against the first accused who is the accused in C.C.No.386/2001 and they pelted stones at police officials causing obstruction and second accused criminally intimidated them showing deadly weapon causing fear of death and thereby all of them have committed the offence punishable under Section 353, 506(2) read with Section 34 of the Indian Penal Code.

3. After investigation, final report was filed and it was taken on file as C.C.454/2001 on the file of the Judicial First Class Magistrate Court-II, Pathanamthitta. When all the accused appeared before the court below, after hearing both sides, charge under Section 353, 506(2)

read with Section 34 of the Indian Penal was framed and the same was read over and explained to them and they pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 5 were examined and Exts.P1 to P5 were marked on their side. After closure of the prosecution evidence, all the accused were questioned under Section 313 of the Code of Criminal Procedure and they denied all the incriminating circumstances brought against them in the prosecution evidence and they had further stated that, they had not committed any offence and they have been falsely implicated in the case. Thereafter, the case was posted for orders and on the date of judgment, second accused, who is the revision petitioner in Crl.R.P.2665/2006 absconded and the learned magistrate found accused Nos. 1, 3 to 6 guilty for the offences alleged under Section 353, 506(2) read with Section 34 of the Indian Penal Code and convicted them thereunder and sentenced them to undergo

simple imprisonment for two years each for each offence and directed the sentences run concurrently and the case against the second accused was refiled as C.C.No.224/2004. Thereafter second accused also appeared and he was also convicted and sentenced as per a separate judgment for the offences under Section 353, 506(2) of the Indian Penal Code and sentenced him to undergo simple imprisonment for two years each for each offence and directed the substantive sentences run concurrently. Accused Nos. 1, 3 to 6 filed Crl.Appeal 163/2004 against the order of conviction and sentence in C.C.No.454/2001 and the second accused filed Crl.Appeal No.185/2004 against the order of conviction and sentence in C.C.No.224/2004 before the Sessions Court Pathanamthitta and both these appeals were made over to Additional Sessions Court(Adhoc-I), Pathanamthitta, for disposal and the learned Additional Sessions Judge by a common judgment allowed the appeal in part and accused

Nos. 4 to 6 were acquitted and the conviction against accused Nos. 1 to 3 was confirmed, but modified the sentence, sentencing accused Nos. 1 to 3 to undergo simple imprisonment for six months each and also to pay a fine of ₹1,000/- each for the offence under Section 353 read with Section 34 of the Indian Penal Code, in default to undergo simple imprisonment for 15 days each. Accused Nos. 2 and 3 again sentenced to undergo simple imprisonment for six months each and also to pay a fine of ₹1,000/- each for the offence under Section 506(2) of the Indian Penal Code, in default to undergo Simple imprisonment for 15 days each. Aggrieved by the same, the present revisions have been filed by the accused persons mentioned above.

4. Heard Shri. N.P. Prajesh, counsel appearing for the revision petitioner and Smt. V.H. Jasmine, learned Public Prosecutor appearing for the state.

5. The counsel for the revision petitioners in both the cases submitted that, having acquitted the other accused persons, the appellate court ought to have applied the same yardstick while appreciating the evidence against the present revision petitioners as well and the conviction is not proper and the sentence is also harsh.

6. On the other hand, learned Public Prosecutor supported the concurrent finds of the court below.

7. The case of the prosecution as emerged from the prosecution witnesses was that, on 30.05.2001, at about 2.45 p.m., PWs 2 and 3 had gone to execute the warrant against the first accused, who is the accused in C.C.No.386/2001 and when they reached the place and they were trying to execute the warrant, first accused and other accused persons prevented them from executing the arrest and they have pelted stones and they have threatened them as well. On the basis of Ext.P1 report given by PW2, Ext.P2

first information report was registered against the first accused, his son Shibu, Thankachan and his wife and his children and 15 identifiable persons, alleging offences under Section 353, 506(2) read with Section 34 of the Indian Penal Code. Thereafter the investigation was conducted by PW4, the Sub Inspector of Police, Koipuram police station. He went to the place of occurrence and prepared Ext.P3 scene mahazar regarding the place of occurrence. He had prepared Ext.P4 mahazar for seizing warrant, issued to arrest the first accused in crime No.386/2001 of the same police station. He gave Ext.P5 report showing the name of six accused persons as the persons involved in the crime. The investigation was completed by PW5, who submitted the final report. PW1 is an independant witness to the incident, but he did not support the case of the prosecution. He was declared hostile. PWs 2 and 3 are the police constables who went to

execute warrant mentioned in Ext.P4 mahazar and both of them have categorically stated that, when they were attacked by the accused persons, it was stated that second accused had threatened by showing a chopper and Thankachan had pelted stones, two ladies came and they caught hold of the first accused, so they left the first accused there and at that time they were pelted with stones. This was corroborated by the evidence of PW3 as well. Though they were cross examined at length, nothing was brought out to discredit their evidence on this aspect. There is no other evidence adduced on the side of the accused to prove that they have been falsely implicated in the case as well. So under the circumstances, the court below as well as the appellate court were perfectly justified in coming to the conclusion that the prosecution has proved the offence under Section 353 and 506(2) read with Section 34 of the Indian Penal Code against the present revision

petitioners and rightly convicted them for those offences. Further the appellate court had sentenced the first accused for the offence under Section 353 of the Indian Penal Code alone, but convicted accused numbers 2 and 3 for the offence under Section 353 and 506(2) of the Indian Penal Code also and that shows that, court below had properly appreciated the evidence and rightly convicted them for the respective offences, which were committed by each accused persons. Further the court below had given the benefit of doubt to other accused persons who filed the appeal as well. So there is no illegality committed by the court below in convicting the revision petitioners for the offence alleged.

8. As regards the sentence is concerned, though the trial court had sentenced them to undergo simple imprisonment for two years each for each offence, that was reduced substantially by the appellate court. Considering the nature of offence, I do not think that there

is any necessity for interfering the sentence as well, as maximum leniency has been shown by the appellate court in imposing the sentence against the present revision petitioners. So the revision lacks merits and they are liable to be dismissed. I do so.

In the result, both the revisions are dismissed, confirming the order of conviction and sentence passed by the court below and modified by the appellate court against the revision petitioners.

Office is directed to communicate this order to the concerned court, immediately.

Sd/-
K. Ramakrishnan, Judge

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P.A. to Judge

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