

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

Cr1.Rev.Pet.No. 3020 of 2004 ()

AGAINST THE JUDGMENT IN CC 1153/1999 of JUDICIAL FIRST CLASS
MAGISTRATE, PERUMBAVOOR DATED 07-09-2004

REVISION PETITIONER(S)/DEFACTO COMPLAINANT:

JAMES, S/O. AVARA, KIDANGATHU MATTAMANA
VEEDU, KURICHILAKODE KARA, KODANAD VILLAGE.

BY ADVS.SRI.V.N.ACHUTHA KURUP (SR.)
SRI.BINDU SREEKUMAR

RESPONDENT(S)/ACCUSED & STATE:

1. RAJU S/O. AVARA, MATTAMANA HOUSE,
KURICHILAKODU KARA, KODANAD VILLAGE.

2. MATHEW S/O. PAILY, KALARICKAPARAMBIL
HOUSE, DO. DO. DO.

3. VARGHESE S/O. VARKEY, DO. DO. DO.

4. MATHEW S/O. VARKEY, DO. DO. DO.

5. CHACKO S/O. VARKEY, DO. DO. DO.

6. ELDHOSE, S/O. CHACKO, DO. DO. DO.

7. SAJU S/O. CHACKO, DO. DO. DO.

8. ELDHOSE S/O. PAULO, DO. DO. DO.

9. ELDHOSE S/O. CHACKO @ KUNJU, DO. DO. DO.

10. ELDHOSE S/O. MATHEW, KALARICKAL HOUSE,
KURICHILAKODE KARA, VENGOOR WEST VILLAGE.

11. NARAYANAN NAIR S/O. PARAMESWARAN NAIR,
PERUNCHERY PUTHEN HOUSE, DO. DO.

12. KURIAKOSE S/O. ISSAQ, PUTHENPURA HOUSE,
DO. DO.

13. JOY S/O. ISSAQ, DO. DO. DO.

14. PAPPACHAN S/O. YACOB, MATTAPILLI (MALI)
HOUSE, FO. DO.

15. AVARA @ ABRAHAM S/O. PAILY,
PUTHEN PURA HOUSE, DO. DO.

16. ELDHOSE @ ELDHO S/O. KURIAKOSE, DO. DO.
DO.

17. CHANDRAN, S/O. AYYAPPAN, PARACKAL HOUSE,
DO. DO.

18. VARGHESE S/O. PAILY, KALARICKAL PARAMBIL
HOUSE, DO. DO.

19. MATHAI S/O. ISSAQ, PUTHENPURAYIL HOUSE,
DO. DO.

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

R,R1 -9 & 11-19 BY ADV. SRI.V.M.KURIAN
R, " BY ADV. SRI.A.V.THOMAS
R, " BY ADV. SRI.MATHEW B. KURIAN
R, " BY ADV. SRI.K.T.THOMAS
BY PUBLIC PROSECUTOR SMT SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 30-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.D.RAJAN, J

.....
Crl. R.P.No.3020 of 2004
.....

Dated 30th July, 2015

ORDER

The revision petitioner challenges the judgment in C.C.No.1153 of 1999 of Judicial First Class Magistrate, Perumbavoor which was filed under Section 143, 147, 148, 447, 427, 506(i) read with 159 IPC. The revision petitioner was the defacto complainant in the trial court, who filed the above case against 19 accused persons. The allegation was that on 2.1.1999 at 11 pm, the accused trespassed into his property and destroyed the compound wall and intimidated him with deadly weapons like spade, pickaxe, iron rod, chopper etc. He sustained a loss of Rs.50,000/-. Perumbavoor police registered Crime No.2 of 1999 and after investigation, laid charge in the trial court.

2. To prove the offence, prosecution examined PW1 and PW2 and marked Ext.P1 to P6. The incriminating circumstances brought out in evidence were denied by the accused while questioning them and they examined DW1 and DW2 and marked Exts.D1 to D4. Trial court, after analysing the evidence, acquitted the accused.

3. Learned counsel appearing for the revision petitioner

submitted that there was illegality in the order passed by the trial court. A wrong appreciation was made by that court which is to be rectified by invoking revisional jurisdiction. R1 to R9 and R11 to R19 represented through counsel. Specific direction was given to take steps against R10. Even then no steps were taken. In the circumstance, I dispensed notice against 10th respondent and heard the matter today.

4. The object of conferring revisional power to the highest court in a state with a jurisdiction of general supervision is to correct the grave failure or miscarriage of justice arising from the defective orders of the courts below. The error or a defect may arise from the misconception of law, irregularity of procedure, misreading of evidence, misconception about law or facts, or undue hardship. The above revisional power is discretionary one and there is no vested right of revision in the sense, when there is vested right assured in appeal. In an appeal, the appellant is given a statutory right to demand adjudication upon a question of law or question of fact or of both. But in a revisional jurisdiction, it is for the court to interfere in exceptional cases whether it seems to have some real and substantial injustice has been

done.

5. In the light of the submission made by the learned counsel, I have gone through the oral evidence of PW1. He stated that on 2.1.1999 at 11 pm, accused trespassed into the property but he has not stated as to what overt act was committed by each accused and the identity of persons who were carrying deadly weapons was not disclosed. The identity of the property to attract the offence under Section 447 also is not proved. No scrap paper has been produced before trial court to prove that the defacto complainant was in possession of the disputed property. He admitted that there was a property dispute and a civil case is pending before Munsiff Court, Perumbavoor as O.S.644 of 1998. When there was no evidence to prove the alleged offence, trial court rightly appreciated the evidence.

6. The defence evidence adduced by the accused shows that some of the accused were admitted in the hospital, DW1 and DW2 were the doctors who examined the accused and issued Ext.D1 to D3 certificates. The defence evidence was also considered by the trial Judge. When there is no direct evidence with regard to the alleged overt act, and the nature

of mischief committed in the property, trial court rightly acquitted the accused in that case. I find no illegality in the above order. There is no merit in this revision petition and it is dismissed accordingly.

P.D.RAJAN, JUDGE

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