

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1923 of 2007 ()

AGAINST THE JUDGMENT IN CC 376/2005 of J.M.F.C.,CHITTUR

REVISION PETITIONER(S)/DEFACTO COMPLAINANT:

**N.M.MUHAMMED MUSTAFA, AGED 56 YEARS,
S/O.MEDASERSHA RAWTHER,
PUDUNAGARAM VILLAGE, CHITTUR TALUK,
PALAKKAD DISTRICT.**

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT(S)/STATE AND ACCUSED:

- 1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM.**
- 2. AHAMMED KABIR @ KUNJA, AGED 54 YEARS,
S/O.SULAIMAN RAWTHER, KONDIN VEEDU
PUDUNAGARAM.**
- 3. SULAIMAN, AGED 41,
S/O.ABDUL MUTHALIF,
KONGINI VEEDU, PUDUNAGARAM.**
- 4. ABUSALI MASTER, S/O.MUHAMMEDKUNHU,
AGED 56 KONGINI LINE, PUDUNAGARAM.**
- 5. ALI, S/O.MUHAMMED,
AGED 32, KONGINI LINE, PUDUNAGARAM.**

**R1 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN
R2 TO R 5 BY ADV. SRI.P.A.ABDUL JABBAR**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27-
10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.1923 of 2007

Dated this the 27th of October, 2015

ORDER

The revision petitioner is the complainant and respondents 2 to 5 are the accused in C.C.376/05 on the file of Judicial First Class Magistrate, Chittur, challenges the judgment of acquittal of the accused. The accused were charge sheeted by the Pudunagaram Police for offences punishable under Section 447 and 427 r/w 34 IPC. The prosecution charge is that on 25.8.05 at 2.00 am, the accused trespassed into the property of the revision petitioner at Kulathumedu in Pudunagaram and in furtherance of their common intention, they removed the southern fence and cut the trees standing on the southern boundary. On the next day, they reported the matter to the Pudunagaram Police, where they registered the above case.

2. During trial, prosecution examined PW1 to PW6 and marked Exts.P1 to P4. The incriminating circumstances brought out in evidence were denied by the

accused while questioning them. They examined DW1 and marked Exts.D1 and D3(a). The trial court acquitted the accused.

3. Heard both sides. The learned counsel appearing for the revision petitioner contended that, there is a civil case pending between the revision petitioner and the accused. One of the reasons stated by the trial court for acquittal was that, there was a delay of 5 hours in registering the case. Sufficient explanation was given by PW1, which was not properly appreciated, hence, the revisional jurisdiction has to be invoked to rectify such error.

4. PW1 to PW3 are the occurrence witnesses. PW1 deposed that, the accused trespassed into his property and cut and removed the trees on the southern boundary. The incident occurred on 25.8.05 at 2.00 am. The information was given to the Police Station at 1.00 pm. The specific case is that, there was a boundary fencing on the southern, eastern and western side which was found damaged in the morning. The neem tree standing on the

boundary wall was also cut and removed. PW2 informed that when he went to the property at 6.00 am, he saw the alleged damages. The accused are the neighbours and they might have committed the aforesaid mischief in the property. PW1 categorically stated that he sustained a loss of Rupees Ten thousand. It is admitted by PW1 that, there is a civil suit O.S.369/05 pending before Munsiffs Court, Palakkad, in which the first accused alone was made as a party. PW2 and PW3 informed about the incident. But they have no case that they saw the incident in the night. Analyzing the oral evidence of PW1 to PW3, it is true that these witnesses never saw the incident and they failed to prove that the accused committed the above damages.

5. The case was registered by PW4, he arrived at the place of occurrence and prepared Ext.P2 scene mahazar. PW3 attested Ext.P2. The Village Officer deposed that he issued Ext.P3 possession certificate and PW1 is the owner of 7.6 ares of property in that village. But no evidence has been adduced by him to prove the disputed boundary

of the property. PW6 completed the investigation and laid charge before court. On the basis of information in Ext.P1, he registered Ext.P4. The Adv. Commissioner in O.S.369/05 was examined as DW1. Exts.D1 to D3(a) were marked through him. A perusal of the evidence of DW1, it is clear that there was a boundary dispute between the accused and the complainant, which is clearly reported in Ext.D3 report and Ext.D3(a) is the sketch prepared in the Civil suit.

The trial court observed that the prosecution witnesses never saw the alleged trespass and mischief committed by the accused. The witnesses deposed about their inference that the accused might have committed the mischief. It is the primary responsibility of the prosecution to prove the case beyond reasonable doubt. In the absence of such proof, the accused were rightly acquitted. There is no illegality in the findings and this revision petition is dismissed accordingly.

STK

//TRUE COPY//
P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE