

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

Crl.Rev.Pet.No. 3000 of 2006 (D)

CRL.A. 49/2004 of THE III ADDL. SESSIONS COURT, KOZHIKODE
S.T. 1503/2001 of JUDICIAL FIRST CLASS MAGISTRATE COURT,VADAKARA

PETITIONER/APPELLANT/ACCUSED::

CHEERAMVEETIL SIVADASAN, S/O. ANDY,
NARAYANA NAGARAM, VADAKARA TALUK.

BY ADVS.SRI.R.ANIL
SRI.RAJU RADHAKRISHNAN
SRI.ANIL K.MOHAMMED

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE::

1. THE HEALTH INSPECTOR,
VADAKARA MUNICIPALITY, VADAKARA, KOZHIKODE DIST.

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

BY SRI.R.SATISH KUMAR
PUBLIC PROSECUTOR SMT. BINDU GOPINATH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 12-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

RAJA VIJAYARAGHAVAN.V. J

Crl.R.P.3000 of 2006

Dated 12th August, 2015

ORDER

1. The above captioned revision petition is preferred by the sole accused in S.T.1503 of 2001 on the file of the Judicial Magistrate of First Class, Vadakara. In the aforesaid case, the petitioner herein was prosecuted u/s 447 r/w 511(2)(c) of the Kerala Municipalities Act, 1994 (for short "the Act").

2. The case of the prosecution can be succinctly stated as follows:

The accused/revision petitioner was proceeded against for conducting a chicken stall in Ward No.19 of Vadakara municipality near Sree Krishna International Hotel without obtaining a licence from the municipality. In the said proceeding which was filed as S.T.1074 of

2001 before the learned Magistrate , petitioner pleaded guilty .Accepting his plea, the Court below found him guilty u/s 447(1) of the Act and convicted and sentenced him to pay a fine of Rs.2500/- on 31.5.2001. Even thereafter, the petitioner continued with the running of the chicken stall in the very same place. According to the prosecution, the petitioner has committed the offence punishable u/s 447(1) r/w 511(2) (c) of the Act.

3. The prosecution examined PW1 to PW3 and marked Exts.P1 to P5 to prove its case. The learned Magistrate on an evaluation of the evidence found the petitioner guilty of the offence u/s 447(1) of the Act and convicted and sentenced him to pay a fine of Rs.100/- for every days of violation from 1.6.2001 till the date of judgment. He was also sentenced to undergo simple imprisonment till he stops his chicken stall and removes the shed from the place.

4. The above judgment was challenged by the petitioner by preferring Crl.A.No.49 of 2004 before the Court of Sessions, Kozhikode. The 3rd Additional Sessions Judge, Kozhikode, as per judgment dated 23.6.2006 confirmed the findings of the learned Magistrate and dismissed the appeal. These concurrent findings passed by the Courts below are challenged by the petitioner in this revision petition.

5. I have heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent.

6. According to the learned counsel, initiation of proceedings against the petitioner is unsustainable under law as it violates the provisions of the Municipality Act, 1994 and the Rules framed thereunder. The

complaint seen filed by the Health Inspector, Vadakara Municipality cannot be the basis for initiation of prosecution as he was not authorized by law. It was further submitted that this Court in **Sivadasan v. Mattannur Municipality (2008 (4) KLT 684)** has held that s.447 of the Act is vague and in the absence of any rules or classification of trade, no person can be prosecuted.

7. I have considered the contentions raised by the opposing parties and the findings rendered by the Courts below. The petitioner was prosecuted on the strength of the complaint filed by the Health Inspector of the Vadakara municipality. It is no more *res integra* that by virtue of S. 545 of the Kerala Municipality Act, only the secretary of the Municipality can institute to withdraw proceeding against any person who commits any offence against the provisions of the Act or the Rules, bye laws

or regulations made there under. If any precedent is required for the same, the judgment of this Court in **Mohammed Basheer v. State of Kerala (2009 (3) KLT 993)**, is the authority. Further prosecution u/s 447 cannot also be said to be maintainable in view of the principles laid down in **Sivadasan v. Mattannur Municipality (2008 (4) KLT 684)** .

8. In view of the above, I am of the considered view that the revision petition is liable to be allowed. The concurrent findings entered into by the Courts below are set aside and the petitioner shall stand acquitted of all charges.

Revision petition is allowed.

Sd/-

RAJA VIJAYARAGHAVAN.V.
Judge

MrCs

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P.S.ToJudge