

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

Cr1.Rev.Pet.No. 160 of 2010 ()

CRL.A 55/2000 of SESSIONS COURT, THODUPUZZHA

CC 23/1998 of J.M.F.C.- I, DEVIKULAM

REVISION PETITIONER/APPELLANT/ACCUSED:

KALIDAS, S/O.RAJU, ULLAVAYAL BHAGAM,
WARD NO.VI, KEEZHANTHOOR VILLAGE, DEVIKULAM TALUK.

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY THE
DIRECTOR OF PUBLIC PROSECUTIONS
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 04-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No.160 of 2010

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Dated this the 4th day of August, 2015

ORDER

The revision petitioner is the 2nd accused in C.C.No.23/1998 on the files of the Judicial First Class Magistrate's Court, Devikulam. He along with the other accused were prosecuted for the offence punishable under Section 27(i)(e)(iii) and (iv) of the Kerala Forest Act.

2. The prosecution allegation against the petitioner and the other accused is that they trespassed into Theerthallar proposed reserve forest and attempted to cut and remove one sandal wood tree on 14.07.1996, thereby they committed the offence punishable under Section 27(i)(e)(iii) and (iv) of the Kerala Forest Act. All the accused pleaded not guilty. After trial, the learned Magistrate found the accused guilty of the offence punishable under Section 27(1)(e)(iii) of the Kerala Forest Act and convicted

thereunder. They were sentenced to undergo simple imprisonment for three months and further directed to pay a fine of ₹1,000/- each with default sentence of two months' simple imprisonment. Aggrieved by the conviction and sentence, the revision petitioner preferred Crl.Appeal No.55/2000 before the Sessions Court, Thodupuzha. After re-appreciating the evidence on record, the learned Sessions Judge remanded the case back to the trial court for re-trial. The legality and propriety of this order is under challenge in this revision petition.

3. Heard the learned counsel for the revision petitioner. Though this revision petition is filed on various grounds challenging the legality and propriety of the findings whereby the court below remanded the matter to the trial court for re-trial, the learned counsel mainly canvassed the point that the accused are specifically deprived of an opportunity to cross examine the witnesses during the course of trial. According to the learned

counsel, the denial of right to cross examine the witnesses is illegal and unsustainable.

4. Going by the impugned judgment under challenge, it is seen that, after re-appreciating the entire evidence on record, the learned Sessions Judge has considered three points, under which illegalities and legal infirmities are found. I do not find any fault with the decision to remand the case back for re-trial when the court below found illegalities or legal infirmities in the impugned judgment under challenge; but as rightly pointed out by the learned counsel for the petitioner, after ordering re-trial, the learned Sessions Judge specifically stated that an opportunity to cross examine PWs.1 to 4 shall not be given to the accused. I am of the opinion that after ordering an open re-trial, the accused cannot be deprived of their opportunity to cross examine the witnesses and such deprivation of right is illegal and unsustainable.

5. Therefore, that part of the impugned order only

will stand set aside and it is made clear that the accused will have the right to cross-examine all the witnesses, whom the prosecution proposes to examine further.

With the above observation, this revision petition will stand disposed of. The trial court is further directed to dispose of the matter after re-trial within a period of three months from today.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge