

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

Crl.Rev.Pet.No. 2400 of 2007 ()

AGAINST THE JUDGMENT IN CRA 194/2006 OF SESSIONS COURT, KOTTAYAM
DATED 14-03-2007
AGAINST JUDGMENT IN CC 459/1995 of J.M.F.C-I.,KOTTAYAM

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

K.T.MICHAEL, RETD.POLICE SUPERINTENDENT,
KARIVELIL GOPURAM VEEDU, PARAMPUZHA P.O., KOTTAYAM.

BY ADVS.SRI.BECHU KURIAN THOMAS
SRI.PAUL JACOB (P)

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

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1. LEELAMMA THOMAS, IKKARAKUNNEL VEEDU,
RAMAPURAM PANCHAYAT, VELLILAPPALLY VILLAGE, KOTTAYAM.
 2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI.N.SURESH
R1 BY ADV. SRI.A.X.VARGHESE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
05-01-2015 ALONG WITH CRL.R.P 2185 OF 2014, THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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Crl.R.P. Nos.2400 OF 2007 & 2185 OF 2014

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Dated this the 5th day of January, 2015

ORDER

Both these revision petitions arise from the order/judgment passed in C.C.No.459 of 1995 passed by the Court of Judicial First Class Magistrate-I, Kottayam. The former revision petition is filed against the judgment dated 14.3.2007 in Crl.A.No.194 of 2006 passed by the Court of Sessions, Kottayam setting aside the conviction and sentence passed by the Court of Judicial First Class Magistrate-I, Kottayam in the aforesaid calender case and remitting the case to the lower court for disposal in accordance with law. It was further directed thereunder to afford an opportunity to the appellant to prove the documents filed before the appellate court along with Crl.M.P.Nos.1522 of 2006 and 200 of 2007 by examining DW1 or any other witness. Pursuant to the order in Crl.A.No.194 of 2006, the petitioner moved Crl.M.P.No.2057 of 2007 in C.C.459 of 1995

seeking a direction to the Superintendent of CBI to produce the entire records. That petition was dismissed by the learned Magistrate as per order dated 18.6.2007 observing that the investigation in the case has been going on from 1992 and that the said petition was moved without specifying the relevant period or relevant pages of the case diary and that allowing such a petition would jeopardize the ongoing investigation. It was also found that it would be ideal for the petitioner to obtain and produce the certified copies of the relevant records and the application was moved without any bona fides. The latter revision petition is filed against the said order passed by the learned Magistrate in CrI.M.P.No.2057 of 2007. In such circumstances, both these revision petitions are taken up for joint consideration and disposal. Both these revision petitions are filed by the same petitioner.

2. I have heard the learned counsel for the petitioner, learned

counsel appearing for the first respondent in both the revision petitions and also the learned Public Prosecutor.

3. The revision petitioner is the accused in C.C.No.459 of 1995 on the files of the Court of Judicial First Class Magistrate-I, Kottayam. The petitioner was the head of the investigating team in the case known as Abhaya's case. The first respondent filed a private complaint pursuant to a telecast of the interview of the petitioner in a channel alleging that it is defamatory. After complying with the procedures it was taken on file and registered as C.C.459 of 1995. During the trial, the petitioner took up the defence of good faith under ninth exception to section 499, IPC. After the trial, the learned Magistrate appreciated the evidence on record and found the petitioner guilty under section 500, IPC and sentenced him to undergo simple imprisonment for six months and to pay a compensation of ₹25000/- to the complainant under section 357(3) Cr.P.C. In default

of payment of compensation he was directed to undergo simple imprisonment for a further period of two months. The petitioner took up the matter in appeal as Crl.A.No.194 of 2006. In view of the order I propose to pass in these revision petitions based on the rival submissions made across the bar, I do not think it necessary to consider the contentions in detail. Evidently, as per judgment dated 14.3.2007, Crl.A.No.194 of 2006 was allowed and the conviction and sentence passed against the petitioner in C.C.No.459 of 1995 was set aside. A scanning of the judgment and the pleadings in Crl.R.P.No.2400 of 2007 would reveal that the petitioner has produced certain documents along with Crl.M.P.No.1522 of 2006 and 200 of 2007 in the Crl.Appeal. Evidently, it was contended before the appellate court that the petitioner was not afforded with ample opportunity to prove those documents in accordance with law and those documents were necessary for the purpose establishing that the petitioner is entitled to get the benefit of the ninth exception to section

499, IPC. The appellate court after recording its reasons held that to substantiate the contention that imputation made by him was made in good faith for protection of his and other's interest it is necessary to produce and prove such documents. It was found that no proper opportunity was afforded to the petitioner in that regard and accordingly set aside the judgment passed by the learned magistrate in the aforesaid calender case. It was found that to prevent failure of justice it is necessary to afford an opportunity to the petitioner herein to prove those documents which were produced along with the aforesaid criminal miscellaneous petitions either by examining DW1 or through any other witness. The former revision petition has been filed against the said order in the criminal appeal. A perusal of the judgment in the criminal appeal would reveal that it is virtually in favour of the petitioner and his contentions were upheld by the appellate court. The conviction and the sentence imposed on the petitioner were interfered with by the appellate court and holding that

affording an opportunity to produce and prove such documents is essential to enable the petitioner to establish his contention that he is entitled to take defence under ninth exception to section 499, IPC. In fact, it is for that purpose that the appellate court remitted the matter to the lower court. It is evident that after the order passed by the appellate court, the petitioner himself had moved the trial court by filing Crl.M.P.No.2057 of 2007 in C.C.No.459 of 1995. I have carefully gone through the contentions raised by the petitioner in Crl.R.P.No.2400 of 2007 and I am at a loss to understand how the petitioner is aggrieved by the said judgment. It is evident that the learned Sessions Judge found that the revision petitioner was not afforded with ample opportunity to produce the documents required for the purpose of establishing his claim of good faith under exception 9 to section 499 IPC and the conviction and sentence passed by the learned Magistrate were set aside. It is also evident that the petitioner has produced certain documents before the appellate court along with

Crl.M.P.Nos.1522 of 2006 and 200 of 2007. It is evident from the judgment in the criminal appeal that those documents were transmitted to the learned Magistrate for the purpose of collecting additional evidence in accordance with law. The contention of the petitioner is that the appellate court had erred in remitting the matter to the lower court instead of doing on its own. A bare perusal of section 391, Cr.P.C would reveal that such power is vested with the lower appellate court and the petitioner is not justified in insisting that the additional evidence should be taken by the lower appellate court itself. In such circumstances obtained in this case, the petitioner is not justified in seeking the prayer to set aside the conviction and sentence imposed on him in C.C.No.459 of 1995 as the very conviction and sentence was already set aside by the appellate court as per the impugned judgment itself. In such circumstances, it is evident that the conviction and sentence imposed on the revision petitioner is no more surviving. In such circumstances, I have no hesitation to hold that the

former revision petition filed against judgment dated 14.3.2007 in Crl.A.No.194 of 2006 is absolutely unnecessary and accordingly it is dismissed. As regards the latter revision petition, as noticed hereinbefore, it is moved against the order of dismissal passed by the learned Magistrate in Crl.M.P.No.2057 of 2007 filed seeking direction to the Superintendent of CBI to produce the entire records in the case register of the CBI as CBIRC 8(5) 93-SPE/KER. The learned Magistrate after perusing the said petition found that the petitioner did not reveal the period or relevant pages of the case diary and that the investigation in the said case had commenced in the year 1992. In such circumstances, the learned Magistrate further found that allowing the application as such would jeopardize the ongoing investigation and in such circumstances, it would only be ideal for the petitioner to obtain and produce copies of the relevant documents. The learned counsel for the respondents submitted that investigation in the aforesaid crime was already completed by the CBI and charge was

laid before the competent court to take cognizance of the offence and thereafter the matter was committed to the Sessions Court and it is pending trial. It is further submitted that in such circumstances it will be possible for the petitioner to apply and obtain certified copies of the required documents. In fact, that alone was observed by the learned Magistrate. In such circumstances, while retaining the judgment passed by the appellate court in Crl.A.No.194 of 2006 directing the learned Magistrate to collect additional evidence based on Crl.M.P.1522 of 2006 and 200 of 2007 and documents produced before the appellate court which was transmitted to the learned Magistrate, liberty is granted to the petitioner to apply and obtain necessary documents solely for the purpose of establishing the defence that he is entitled to get the benefit of ninth exception to section 499 IPC and produce such documents before the learned Magistrate for consideration along with documents which were transmitted from the appellate court. For that purpose the petitioner is

granted 45 days' time. It is made clear that no further time will be granted in that regard and on the failure of the petitioner to produce such documents availing this liberty the learned Magistrate shall consider C.C.No.459 of 1995 in terms of the direction of the appellate court in Crl.A.No.194 of 2006. Taking into account the fact that the C.C is of the year 1995, the learned Magistrate shall dispose of the C.C as expeditiously as possible. Accordingly, the latter revision petition is disposed of.

**Sd/-
C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

