

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

Crl.Rev.Pet.No. 441 of 2010 ()

Crl.A 188/2007 of ADDL.SESIONS COURT (ADHOC), MAVELIKKARA
CC 569/2005 of J.M.F.C., KAYAMKULAM

REVISION PETITIONERS/REVISION PETITIONERS/APPELLANTS/ACCUSED:

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1. BASHEER, S/O.ABOOBAKER
PULICKAL VEEDU, KARIMPUZHA P/W NO.XIII
KARIPPAVANA MURI, KARIMPUZHA VILLAGE, OTTAPPALAM TALUK
PALAKKAD DISTRICT.
 2. SAITHALVI, S/O.HAMSA,
PULIYALIL VEEDU @ SAFIYA MANZIL, DO. DO.
 3. SAIDU, S/O.MOIDEEN,
PARAMPIL PEEDIKAYIL, DO. DO.
 4. MUHAMMED KUTTY, S/O.MOIDEEN,
PARAMPIL PEEDIKAYIL, DO. DO.

BY ADVS.SRI.BASANT BALAJI

RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
23-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.441 of 2010

Dated this the 23rd day of November 2015

O R D E R

The accused persons in C.C.No.569 of 2005 on the files of the Court of the Judicial Magistrate of First Class, Kayamkulam have filed this revision petition challenging the concurrent finding of conviction and sentence passed by the courts below under Section 379 I.P.C. read with Section 34 I.P.C.

2. Heard.

3. The prosecution allegation is that the revision petitioners, in furtherance of their common intention, committed theft of a sandalwood tree from the property of

PW1 on 13.12.2004 at 1 a.m.

4. Before the trial court, PW1 to PW5 were examined and Exts.P1 to P5 were marked for the prosecution, besides identifying MO1 series and MO2. No evidence was adduced from the side of the revision petitioners.

5. PW2 and PW3 are the Police Officers, who were on official duty on 13.12.2004. On that day, they intercepted a car containing one sandalwood piece. PW2 and PW3 stated that altogether six persons were there in the car at the relevant time. Out of the said six persons, two persons were sitting on the front seat and four persons were sitting on the back seat. The persons who were sitting on the front seat ran away from the scene on seeing the police party. The persons who were sitting on the back seat could not

run away from there. They were arrested from the spot. But PW2 and PW3 could not identify the persons who were arrested from the spot and the persons who had run away from the place of occurrence. Therefore, the evidence of PW2 and PW3 is not helpful to the prosecution case.

6. PW1 is the *de-facto complainant* who stated about the theft in tune with the prosecution case. According to PW1, the accused came to his house for purchasing the sandalwood tree. However, PW1 was not ready to sell. They went back. The evidence of PW1 would give room for suspicion with regard to the involvement of the revision petitioners with the commission of the offence. But, it is settled that the suspicion, however grave, cannot take the

place of legal proof. The Investigating Officer was not examined in this case. No arrest memo was also produced and marked before the court to prove the arrest of the revision petitioners from the spot. Having gone through the relevant inputs, I find that the courts below erred in appreciating the evidence of identification of the revision petitioners by PW2 and PW3. The courts below also failed to appreciate that the arrest of the revision petitioners was not proved by the prosecution. In view of the above reasons, it has to be held that the prosecution failed to establish that the revision petitioners were found in possession of MO1 sandal wood, as alleged by the prosecution and consequently, the conviction and sentence passed by the courts below cannot be sustained.

In the result, the revision petition stands allowed, setting aside the conviction and sentence passed by the courts below under Section 379 I.P.C. read with Section 34 I.P.C. and the revision petitioners are acquitted for the said offence. The bail bonds of the revision petitioners stand cancelled and they are set at liberty.

Sd/-
B.SUDHEENDRA KUMAR,
JUDGE

dl/24.11.2015

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PA to Judge