

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

Cr1.Rev.Pet.No. 3854 of 2006 ()

AGAINST THE JUDGMENT IN CRA 18/2006 of ADDL.DISTRICT & SESSIONS COURT
(ADHOC)-II, THODUPUZHA DATED 25-07-2006

AGAINST THE JUDGMENT IN CC 3/2005 of J.M.F.C.-I (FOREST OFFENCES),
THODUPUZH DATED 17-12-2005

REVISION PETITIONER(S)/APPELLANT/ACCUSED 2 & 3::

1. JOHN, S/O. CHACKO,
THELLIYANKAL VEEDU, THENNATHOOR KARA
KODIKULAM VILLAGE, THODUPUZHA TALUK.

2. SAJU, S/O. VARKEY,
THELLIYANKAL VEEDU, HENNATHOOR KARA, KODIKULAM VILLAGE
THODUPUZHA TALUK.

BY ADV. SRI.M.V.SABU

RESPONDENT(S)/RESPONDENTS/COMPLAINANT::

1. SUB INSPECTOR OF POLICE,
KALIYAR POLICE STATION, THODUPUZHA.

2. STATE OF KERALA,
REPRESENTED BY DIRECTOR GENERAL OF PROSECUTION
HIGH COURT OF KERALA, ERNAKULAM.

BY PP SMT SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 21-05-2015, ALONG WITH CRRP. 3923/2006, THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:

P.D.RAJAN, J

.....
Crl.R.P.Nos.3854 & 3923 of 2006
.....

Dated 21st May, 2015

ORDER

This revision petition arises out of the judgment in Crl.A.18 of 2006 of the Additional Sessions Judge, Thodupuzha. Petitioners were accused in C.C.No.3 of 2005 of Judicial First Class Magistrate I, Thodupuzha and they were convicted under Section 447, 427, 506(ii) read with 34 IPC and released under Section 4 and 5 of Probation of Offender's Act (hereinafter referred to as the 'P.O.Act'). Against that, they preferred the above appeal before the Sessions Court, Thodupuzha which was dismissed by the appellate court.

2. The prosecution allegation was that on 14.12.2004 at 11 pm, accused 1 to 3 trespassed into the property of Harrison Malayalam Plantation at Kaliyar and committed mischief in the property. They cut and damaged 100 pineapple plants and destroyed three synthetic tanks having a capacity of 3000 litres each and destroyed 90 metres of hose and thereby PW1 sustained a loss of Rs.45,000/-. On the basis of the information, Kaliyar police registered the above case and after investigation, laid charge before Judicial First Class Magistrate I, Thodupuzha.

3. In the trial court, prosecution examined PW1 to PW5 and admitted Ext.P1 to P5 as documentary evidence. The incriminating circumstances brought out in evidence were denied by them while questioning the accused. They examined DW1 and marked Ext.D1 to D7 in support of their defence contention. Trial court, after analysing the oral and documentary evidence, convicted the accused under Section 447, 427 and 506(ii) read with 34 IPC and released them under Section 4 of the Act. They were also directed to pay Rs.15,000/- each under Section 5 of the P.O.Act.

4. Learned counsel appearing for the revision petitioners contended that there is no direct evidence with regard to the incident and the interested testimony of PW2 and 3 were not properly analysed by the courts below. There is no evidence with regard to the extent of damage. Therefore the compensation granted is excessive. Learned Public Prosecutor contended that direct evidence of PW2 and 3 who are the watchmen of the plantation is admissible and there is no reason to disbelieve them. They reported the matter on the next day to PW1. No reasons are stated by the defence counsel to discard their evidence.

5. It is admitted by the revision petitioners that the incident occurred on 14.12.2004 at 11 pm but they disputed their presence at the place of occurrence in the night since the people residing near the place of occurrence were not cited as witness. PW2 is the Estate Watcher who deposed that he heard a sound at 11 pm. When he arrived at the place of occurrence, A1 to A3 were destroying the pineapple plants, synthetic water tanks and hose. PW3 was also present there and when PW2 and 3 intervened, appellant abused them and threatened them by showing the chopper and they became silent, withdrew from there and on the next day, reported the matter to PW1. On the basis of that information, PW1 reported the matter to Kaliyar police and they registered Crime No.213 of 2004 and Ext.P1 is the FIR. PW2 and 3 are the workers of PW1 itself is not a ground to discard their evidence on the ground that they are interested witnesses. Their direct evidence is admissible.

6. The extent of damage was stated by PW1. He deposed that he took the property under lease for a period of 3 ½ years from Harrison Malayalam Plantation Ltd. Mo1 is the weapon used for cutting those plants and hose. In his

evidence, he deposed that 100 sapplings of pineapple were cut and damaged. Three synthetic tanks, 3000 litres each was cut and destroyed. Moreover, hose having 1 ½ inch diameter and 90 metres length was also cut and damaged. He sustained a loss of Rs.45,000/-. PW4 attested Ext.P2 mahazar in which it is stated that the total loss would come to Rs.45,000/-. But the actual loss was not properly assessed in Ext.P2. Therefore the total damage assessed by PW1 needs reconsideration. When mischief is committed by a person, the actual damages caused to PW1's property has to be specifically calculated while fixing the compensation. The separate calculation with regard to actual loss to the synthetic tank and hose and pineapple plants ought to be assessed by the Investigating Officer at the time of preparing Ext.P2 mahazar. When such a calculation is not found, I am of the opinion that the calculation about the damages is not proper.

7. Petitioners examined DW1, who is the Secretary of the Kodikulam Grama Panchayat for proving that there was shortage of water in that area and they issued stop memo for taking water from the river and Ext.P1 notice was issued to PW1. Even though such notice was issued, revision petitioners

have no right to cause such damage in the property of PW1. Therefore, the defence contention put forward by the revision petitioners was rejected by the appellate court and trial court. Therefore the conviction passed by the trial court which was approved by the appellate court under Section 447, 427, 506 (ii) read with 34 IPC is confirmed. The revision petitioners were under the supervision of the Probation Officers for the last three years. They submitted that they had executed a bond for Rs.20,000/- each with two solvent sureties each for keeping peace and good behaviour during the period and no violation is reported. Hence the order passed under Section 4 of the Probation of Offenders Act does not need any interference.

8. At the same time revision petitioners were directed to pay a compensation of Rs.15,000/- each under Section 5 of the Probation of Offender's Act. When any direction is issued by a court under Section 3 or 4 of the Probation of Offender's Act, if it thinks fit to make such direction to pay compensation as the court think reasonable for the loss or injury caused by any person by the commission of such offence, the amount ordered to be paid under Section 5(1) shall be recoverable as

fine as per the provisions of the Code. According to the statement of PW1, Rs.45,000/- was granted as compensation under Section 5 of the P.O Act. When there is no specific calculation with regard to the actual loss, I think it reasonable to modify the compensation as Rs.10,000/- each under section 5 of the Act.

Hence I direct as follows:-

- a) Revision petitioners are directed to pay Rs.10000/- each as compensation under Section 5 of the P.O Act.
- b) Disburse Rs.30,000/- to PW1 as compensation for the loss sustained to him.
- c) The excess amount deposited by the revision petitioners shall be reimbursed to the petitioners forthwith.

The revision petitions are partly allowed.

P.D.RAJAN, JUDGE

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