

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

Crl.Rev.Pet.No. 18 of 2015 ()

CRL.RP 31/2009 OF SESSIONS COURT, KOLLAM
CC 397/2004 of J.M.F.C., SASTHAMCOTTA

REVISION PETITIONER(S)/RESPONDENT/ACCUSED:

1. BADARUDEEN, S/O UMANKANNU RAWTHER,
NALUTHUNDIL KIZHAKKATHIL, EAST OF PULIMOODU MARKET.,
SOUTH MURI, SOORAND NORTH VILLAGE, KOLLAM DISTRICT
2. SHAJAHAN @ SHAJI, S/O SULAIMAN RAWTHER,
KALEKADAMPATTU VEEDU, EAST OF PULIMOODU MARKET, SOUTH MURI
SOORAND NORTH VILLAGE, KOLLAM DISTRICT
3. K.P RASHEED, S/O PAREETH RAWTHER, KOCHUVILAYIL
EAST OF PULIMOODU MARKET, SOUTH MURI
SOORNAD NORTH VILLAGE, KOLLAM DISTRICT
4. SHAIJU, S/O NIZAR RAWTHER
KIZHAKETHIL PADINJATTATHIL VEEDU, EAST OF PULIMOODU MARKET
SOUTH MURI, SOORAND NORTH VILLAGE, KOLLAM DISTRICT.
5. BAIJU, S/O HASSANKUTTY RAWTHER
KIZHAKETHIL PADINJATTATHIL VEEDU, EAST OF PULIMOODU MARKET
SOUTH MURI, SOORAND NORTH VILLAGE, KOLLAM DISTRICT
6. KALEEL, S/O MYTHEENKUNJU, ALIYADE AYYATHUVEEDU
EAST OF PULIMOODU MARKET, SOUTH MURI
SOORNAD NORTH VILLAGE, KOLLAM DISTRICT
7. ABDUL KADAR, S/O MAIDEEN RAWTHER, KIZHAKEVILAYIL
EAST OF PULIMOODU MARKET, SOUTH MURI
SOORNAD NORTH VILLAGE, KOLLAM DISTRICT

BY ADVS.SRI.K.S.ARUN KUMAR
SMT.M.N.MAYA
SRI.M.S.DILEEP
SMT.RESMI THOMAS

RESPONDENT(S):

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

BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
12-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.R.P.18/15

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A :JUDGMENT DATED 26.06.2009 OF THE JUDICIAL FIRST CLASS
MAGISTRATE COURT, SASTHAMKOTTA IN C.C.397/2004.

ANNEXURE B:TRUE COPY OF THE ORDER DATED 30.11.2009 IN
CRL.R.P.NO.31/2009 OF THE LEARNED SESSIONS COURT, KOLLAM

//TRUE COPY//

P.A.TO JUDGE

C.T. RAVIKUMAR, J.

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Crl.R.P. No.18 OF 2015

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Dated this the 12th day of January, 2015

ORDER

This revision petition is directed against the order dated 30.11.2009 in Crl.R.P.No.31 of 2009 passed by the Court of Session, Kollam. The petitioners herein were the accused in C.C.No.397 of 2004 on the files of the Court of Judicial First Class Magistrate, Sasthamkotta. They were tried therein for offences punishable under sections 143, 147, 148, 341, 332, 333 read with 149 IPC and section 3 (2)(a) of the P.D.P.P Act and ultimately they were acquitted as per Annexure-A judgment dated 26.6.2009. However, it was later found by the learned Magistrate that he has committed an incurable error by trying the accused in C.C.No.397 of 2004 as the offence under section 333 IPC was exclusively triable by a Court of Session. Thereupon, that fact was duly reported to the Chief Judicial Magistrate and on

getting a report in that regard from the Chief Judicial Magistrate, the learned Sessions Judge, Kollam registered a suo motu revision petition and the entire records in connection with C.C.No.397 2004 were called for. After hearing the petitioners and the learned Public Prosecutor, Annexure-B order was passed by the learned Sessions Judge.

2. I have heard the learned counsel for the revision petitioners and the learned Public Prosecutor.

3. A scanning of Annexure-B order would reveal that at the time of argument, the position that offence under section 333 IPC is triable only by a Court of Sessions is rightly conceded by both sides before the learned Sessions Judge. When once the said fact is admitted and, in fact, indisputable in view of the classification of offences in the First Schedule to the Code of Criminal Procedure under the heading "I-OFFENCES UNDER THE INDIAN PENAL CODE (45 of

1860), there cannot be any doubt with respect to the position that Annexure-A judgment passed by the learned Magistrate would become totally invalid in view of the fact that a Court of Magistrate of the First Class is not a court of competent jurisdiction to frame the charge and try an accused under section 333 IPC and it is an incurable irregularity. In the said circumstances, the findings of the learned Sessions Judge that the registration of C.C.No.708 of 2009 after taking cognizance on the final report was improper as the learned Magistrate has no jurisdiction to try the offence and consequently, setting aside the very registration of C.C.No.708 of 2009 cannot be said to be illegal and warranting interference. The learned Magistrate was directed to take steps for committing the case in accordance with law and the case was remitted to the Court of Judicial First Class Magistrate, Sasthamcotta as per Annexure-B order. That apart, since a Magistrate not being empowered by law to take cognizance of and to try an offender for the offence under section 333 IPC the action on the part of the learned Magistrate in taking cognizance of the offence

under section 333 IPC and in trying the petitioners for the said offence would vitiate the proceedings in view of section 461, Cr.P.C.

4. Now, I will consider the challenge of the revision petitioners against Annexure-B order relying on the principle that no person can be punished or prosecuted for the same offence more than once. However, a bare perusal of section 300, Cr.P.C would reveal that it incorporates principle of *autrefois acquit* viz., no one shall be punished or put on twice for the same matter. The plea based on this principle or the doctrine of double jeopardy is recognized by section 300 Cr.P.C only where an issue of a fact has been tried by a competent court on a former occasion and a finding has been returned in favour of the accused as in such eventuality, the finding would constitute an estoppel or *res judicata* against the parties to that proceedings. In this case, the learned Sessions Judge interfered with the judgment in the calender case passed by the learned Magistrate by which the learned Magistrate, ignoring the fact that offence under section 333, IPC is

triable exclusively by a Court of Session, tried the revision petitioners and acquitted them. In such circumstances, the provisions under section 300, Cr.P.C would not be available to challenge the order passed by the learned Sessions Judge. The learned counsel also made a feeble attempt to mount challenge against the said order in the light of Article 20 (2) of the Constitution of India. The right secured under clause (2) is grounded on the common law maxim “*nemo debet bis vexari*”- means, a man shall not be brought to danger for one or the same offence more than once. A close scrutiny of Article 20(2) of the Constitution of India would undoubtedly reveal that the bar thereunder operates in respect of a second prosecution and consequential punishment for the same offence. In other words, what it bars is the prosecution and punishment after an earlier punishment for the same offence. 'Offence' for the purpose of Article 20(2) means an offence as defined in section 3(38) of the General Clauses Act applied to the Constitution by virtue of Article 367 of the Constitution of India. True that this must be treated to have supplemented by

section 26 of the General Clauses Act and certainly, by section 300, Cr.P.C where the second prosecution is excluded by the doctrine of autrefois convict or autrefois acquit. I have no hesitation to hold that the said Article also cannot be a ground for the non-prosecution of the revision petitioners, in view of the position of law and provisions of law. In this case, evidently, in view of the facts obtained, the revision petitioners cannot be heard to contend that they were tried by a court of competent jurisdiction. When a person is booked for an offence he is liable to face the trial. He cannot be heard to say that the irregularity committed in the matter of conducting a trial by a competent court shall be a ground for his non-prosecution or in other words, that trial by a competent court is impermissible even in such circumstances. In view of the reasons mentioned as aforesaid, I do not find any irregularity or infirmity in the order passed by the learned Sessions Judge setting aside the judgment passed by the learned Magistrate trying the petitioners for offence under section 333 IPC and in issuing further directions as referred hereinbefore. When a

case is registered against a person for offences including an offence triable by a Court of Sessions, certainly the court having jurisdiction to try that offence alone could try the offence and pass a verdict thereon. In such circumstances, the direction of the learned Sessions Judge setting aside the judgment of the learned Magistrate and ordering for initiating steps for committing the case can only be said to be in tune with the mandate of law and therefore, this revision petition is liable to fail. Accordingly, it is dismissed. Taking into account the fact that the crime is of the year 2004, the learned Magistrate shall also expedite the committal proceedings and on such committal, the Sessions Court shall expedite the proceedings.

Sd/-
C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010