

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

Crl.Rev.Pet.No. 728 of 2013 ()

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AGAINST THE ORDER/JUDGMENT IN CP 50/2012 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT, THODUPUZHA, MUTTAM
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REVISION PETITIONER(S)/ACCUSED NOS.1 TO 3:

- 1. K.K.THOMAS
S/O.KURIAN, KUNNUMPURATH VEETIL, KOOVAPPALLY KARAYIL
KUDAYATHUR VILLAGE, THODUPUZHA TALUK.**
- 2. KURIAN THOMAS
S/O.K.K.THOMAS, KUNNUMPURATH VEETIL
KOOVAPPALLY KARAYIL, KUDAYATHUR VILLAGE
THODUPUZHA TALUK.**
- 3. K.K.OUSEPACHAN
S/O.KURIAN, KUNNUMPURATH VEETIL, ARAKKULAM VILLAGE
ARAKKULAM KARA, THODUPUZHA TALUK.**

BY ADV. SRI.T.V.GEORGE

RESPONDENT(S)/DE-FACTO COMPLAINANT:

- 1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. GEORGE
S/O.DEVASSIA, PULIYANMAKKAL VEETIL
KUDAYATHOOR VILLAGE, KOOVAPPALLY KARA
THODUPUZHA TALUK.**

**R2 BY ADV. SRI.N.R.CHANDRASEKHARAN
R2 BY ADV. SRI.T.H.CHACKO
R2 BY ADV. SRI.BIJU GEORGE (VADASSERY)
R1 BY ROY THOMAS, PUBLIC PROSECUTOR**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 05-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

ANNEXURE-AI- TRUE COPY OF FINAL CHARGE IN CC.NO.73/2011 BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, THODUPUZHA.

ANNEXURE-AII- TRUE COPY OF FINAL CHARGE IN CC.NO.120/2011 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, THODUPUZHA.

ANNEXURE-III- TRUE COPY OF COMPLAINT AS C.M.P.NO.9038/2010 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, THODUPUZHA.

ANNEXURE-AIV- TRUE COPY OF REFER REPORT DATED 24/2/2011 IN FIR 827/10 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, THODUPUZHA BY THE ASST.SUPERINTENDENT OF POLICE, THODUPUZHA.

ANNEXURE-AV-TRUE COPY OF COMPLAINT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, THODUPUZHA DATED 19.12.2011.

ANNEXURE-AVI-TRUE COPY OF ORDER TAKING COGNIZANCE OF THE CASE DTD . 26.9.2012 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT, THODUPUZHA.

RESPONDENTS EXHIBITS:-

ANNEXURE R2(A)- TRUE COPY OF TRIBAL STATUS CERTIFICATE DATED 29.4.2013 ISSUED BY THE TAHSILDAR, THODUPUZHA.

ANNEXURE R2(B)-TRUE COPY OF THE JUDGMENT IN O.S.NO.259/2007 DATED 25.9.2009 PASSED BY THE MUNSIF COURT, THODUPUZHA.

ANNEXURE R2(C) - TRUE COPY OF THE ORDER TAKING COGNIZANCE OF THE CASE BY THE JFCM COURT, THODUPUZHA.

R.A V

TRUE COPY

PATO JUDGE

C.R.

K.RAMAKRISHNAN, J

CRL.R.P.NO.728 OF 2013

Dated this the 5th day of February, 2015

O R D E R

Accused Nos.1 to 3 in CP.NO.50/2013 on the file of the Judicial First Class Magistrate Court, Thodupuzha under section 482 of the Code of Criminal Procedure.

2. The case of the petitioners in the petition was that petitioners 1 and 2 are father and son and third petitioner is the brother of first petitioner and petitioners 1 and 2 are residing together and third petitioner is residing at a faraway place called Arakkulam.

3. On 06.11.2010, the second respondent and his men encroached into the petitioner's property and tried to construct a road forcibly through the petitioner's property. The same was reported to the Kanjar police station by the first petitioner, and the Kanjar police came to the spot and demanded second respondent to stop the encroachment. As no action was taken by the police, he filed a criminal complaint before the Judicial First Class Magistrate Court, Thodupuzha, Muttam on 12.11.2010 and the same was forwarded to the Kanjar police under section 156(3) of the Code of Criminal Procedure by the

learned Magistrate. In the meantime, while petitioners 1 and 2 were in the court premises on 12.11.2010, second respondent and his men further encroached into the petitioner's property and forcibly constructed a road destroying and damaging all the improvements therein, which includes 28 metres of a kayyala. Having seen the illegal encroachment made by the second respondent, the first petitioner again preferred a complaint before the local police on 13.11.2010, and since no action was taken, he filed another complaint before the Judicial First Class Magistrate Court, Thodupuzha on 19.11.2010, and the same was forwarded to the local police for investigation and on the basis of the two complaints forwarded to the police, two cases as Crime No.714/2010 under sections 447,427, 506(2) read with section 34 of Indian Penal Code and Crime No.730/2010 under sections 447, 427 read with section 34 of Indian Penal Code were registered by Kanjar police and after completing the investigation, final reports were filed in both cases one before the Chief Judicial Magistrate Court, Thodupuzha and other before the Judicial First Class Magistrate Court, Thodupuzha respectively. Agitated by the action of the petitioners 1 and 2, second respondent as a retaliation for the same, filed a complaint as Crl.M.P.No.9038/2010 alleging that petitioners 1 and 2 have encroached into his property and called his caste

name and on a subsequent date, third petitioner threatened him over telephone and sought to initiate action against the petitioners alleging offences under section 3 of Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989. The learned Magistrate forwarded the said complaint to the Deputy Superintendent of Police for investigation and upon receipt of the complaint, a case was registered as Crime No.827/2010 under section 3(I) (iv) (v) (viii) and (x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 against the petitioners herein. After investigation, the Deputy Superintendent of Police convinced that the allegations are false and filed the refer report before the Judicial First Class Magistrate Court, Thodupuzha. Thereafter, the second respondent filed a protest complaint and on that basis the learned Magistrate took cognizance of the case as CP.No.50/2012 and taking cognizance of the case by the learned Magistrate is being challenged by the petitioners by filing this revision petition.

4. Heard the counsel for the revision petitioners and the counsel appearing for the second respondent and the Public Prosecutor.

5. The counsel for the revision petitioners submitted that even going by the allegations in the complaint, it will not be

said that any offence under section 3(I) (x) is attracted. Further, there is no document or material produced to show that the second respondent belongs to Scheduled Castes or Scheduled Tribe. Further, there is no allegation that the alleged threat or abusive words with caste name were made with an intention to humiliate the second respondent and it was made in a public view. Further, there is no allegations that third accused had done anything in respect of the same. The allegation was that accused Nos.1 and 2 alone had threatened and abused him with abusive words calling his caste name. He had relied on the decision reported **2008 KHC 6772 [Gorige Pentaiah Vs State of A.P and Others]** in support of his contention.

6. On the other hand, the counsel appearing for the second respondent submitted that the court while taking cognizance of the case has to consider the background in which the words were used and it must be uttered in public view and not in public place and if it can be heard by public, then offence is attracted. Further, the refer report filed by the Deputy Superintendent of Police will go to show that he belongs to mala arayan community, which is Scheduled Tribe and merely because he was converted to Christianity will not take away his status of Schedule Tribe and took away from the protection provided under the statute. Once the material on record shows

that prima facie offence has been made out, other matters to be considered on the basis of evidence and this court cannot interfere at this stage. Further, according to the counsel, it is an interlocutory order and warrant has been issued against the accused Nos.2 and 3, and they did not appear and suppressing the fact the present revision has been filed and as such the revision is not maintainable.

7. He had relied on the decisions reported in **2008 CRI.L.J.113 [Hira Lal Vs State of U.P and Another], 1992 CRI.L.J.2032 [Murlidhar Vs State of U.P and Another], 1999 CRI.L.J.1666 [Rosamma Thomas and Another Vs. Circle Inspector of Police, Tripunithura], 1982(3) SCC 510 [Gopal Vijay Verma Vs Bhuneshwar Prasad Sinha and Others], 2000 CRI.L.J.1978 [Goura Gobinda Das and Another Vs State of Orissa], 2011(2) KLT S.N.79 (Case No.98) [Arumugam Servai Vs State of Tamil Nadu], 1987 CRI.L.J.1325 [Ishwar Dayal Singh and Another Vs State of Bihar and Another], 2013 (2) KHC 37 [Stephen Joseph and Another Vs State of Kerala] 2001 (1) KLT 125 [Binoy Vs State of Kerala]** in support of his case.

8. It is an admitted fact that petitioners 1 and 2 herein and the second respondent were having properties adjacent to each other. It is also seen from the allegations in the complaint

and also from the allegations in the revision petition that there were disputes regarding the property and cases have been filed in respect of the same. It is also in away admitted that on the basis of the private complaints filed by the second petitioner, which were forwarded to the police for investigation, two crimes were registered and after investigation, final reports were filed against the second respondent and those cases were taken on file by the respective courts. It is also in away admitted that the second respondent had filed a private complaint as Annexure-III before the Judicial First Class Magistrate Court, Thodupuzha, which was forwarded to the Deputy Superintendent of Police for investigation and on that basis, a crime was registered as Crime No.827/2010 of Kanjar police station and after investigation, Annexure-4 final report was filed stating that the allegations were false and it is thereafter that Annexure-5 complaint was filed by the second respondent against the petitioners herein alleging commission of offences under section 3(I) (iv) (v) (viii) and (x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and after taking evidence of the complainant and three witnesses, the learned Magistrate took cognizance of the case as CP.No.50/2012 under section 3(I) (iv) (v) and (x) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,

1989. Taking cognizance of the case has been challenged by the revision petitioners by filing this revision.

9. The allegations in the complaint was that they were having property adjacent to each other. When the second respondent tried to construct a road through his property, that was objected by the petitioners 1 and 2 and on the basis of the complaint, police came and stopped the construction of the road and thereafter in the presence of the surveyor, property was measured and boundary was fixed and again on 06.11.2010, when he tried to construct the road along with his friends, the first revision petitioner came there and abused him saying “എടാ മലയരയൻകുരങ്ങാ, നിന്നെക്കൊണ്ട് റോഡ് പണിയിക്കില്ല. സുപ്രീം കോടതിവരെ പോയാലും നിന്നെക്കൊണ്ട് റോഡ് പണിയിക്കില്ല എന്നും, and at that time, the son of the first revision petitioner who is the second revision petitioner came and abused him എടാ, മലയരയാ നിന്റെ പറമ്പിൽ ഞാൻ തുറമ്പാ കുത്തിക്കിട്ട്ല, തുറമ്പാ കൊണ്ടുവന്നാൽ നിന്നെ അതുകൊണ്ട് തല്ലിക്കൊന്നുകളയും”. Thereafter the road was constructed on 12.11.2010. But on 15.11.2010 the third revision petitioner had threatened him over telephone that if they trespass into the property, they would obstruct the same and if they got the courage, they can object the same. So, according to the

complainant, these words were used in public view and this was made with an intention to humiliate him and thereby the revision petitioners have committed the offence.

10. Section 3(I) (iv) (v) (viii) and (x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 reads as follows:-

Section 3(I):-Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe -

x x x x

Section 3(iv):- wrongfully occupies or cultivate any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or Scheduled Tribe or gets the land allotted to him transferred.

Section 3(v):- wrongfully dispossesses a member of a Scheduled Caste or a Scheduled tribe from his land or premises or interferes with the employment of his rights any land, premises or water.

x x x x

Section 3(viii):- institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe.

x x x x

Section 3(x):- intentionally insults or intimidates with

intent to humiliate a member of a Scheduled Caste or a Scheduled tribe in any place within public view.

11. There is no allegation in the complaint that the revision petitioners have wrongfully dispossessed a member of a Scheduled Tribe from his land or premises and interferes with the enjoyment of his rights in any land, premises or water, in order to attract an offence under section 3(I) (v) of the Act. These allegations must be alleged to attract the said offence. In this case there is no such allegation made or even the witnesses examined did not say that they have been dispossessed from the property. So, under the circumstances, the offence under section 3(I) (v) is not attracted even on the basis of the allegations and the evidence adduced on the side of the complainant. So, taking cognizance of that offence by the court below appears to be illegal and the same is liable to be quashed.

12. As regards the offence under section 3(I) (iv) is concerned, it must be alleged that the revision petitioners were wrongfully occupy or cultivate any land owned by, or allotted to, or notified by any competent authority to be allotted to a member of a Scheduled Caste or Scheduled Tribe or gets the land allotted to him transferred. There is no such allegations in the complaint also. In fact, there is a boundary dispute between them and when this was questioned, the alleged

incident happened. So, under the circumstances, the allegations are not sufficient to attract the offence under section 3(I) (iv) of the Act as well and so taking cognizance for the that offence is also liable to be quashed.

13. As regards the offence under section 3(I) (viii) is concerned, in order to attract the offences, it must be alleged that the revision petitioners have instituted false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe. Even going by the allegations in the complaint and also the documents produced, it would be seen that when there was dispute regarding the boundary, certain criminal cases have been registered and civil suit has been filed. Merely because, the criminal cases were ended in acquittal alone is not a ground to come to the conclusion that it was a false or vexatious prosecution or suit as claimed by the complainant. Further, it would be seen from the evidence adduced also, when they tried to construct a road, an objection was raised and police interfered and stopped the construction and directed that without measuring the property that could not be done. So, a surveyor was called and only after surveyor fixed the boundary of the property that they made an attempt to construct the road, which was later objected. So, under the circumstances,

when there is a dispute regarding the boundary and on that basis certain cases have been filed, which cannot be said that it was done with a malicious or vexatious intention and mere allegations on that aspect alone is not sufficient to attract the offence under section 3(I) (viii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. So, taking cognizance under that section is also bad in law in view of the admitted allegations made in the complaint itself.

14. Then, the question arises as to whether the offence under section 3(I) (x) is attracted or not. It is true that in the decision reported in **2008 KHC 6772 [Gorige Pentaiah Vs State of A.P and Others]** it has been observed that in order to attract the offence under section 3(I) (x) of the Act, the complainant ought to have alleged that the appellant was not a member of a Scheduled Caste or Scheduled Tribe and he was intentionally insulted or intimidated by the accused persons with an intention to humiliate in a place within public view and if such allegations are not there taking cognizance of the offence is bad in law.

15. The counsel for the revision petitioners submitted that no document has been produced to prove that the second respondent belongs to mala arayan Christian community which is a Scheduled tribe and that there is no allegations against the

third petitioner that he had abused using his caste name. In the decision reported in **1999 CRI.L.J.1666 [Rosamma Thomas and Another Vs. Circle Inspector of Police, Tripunithura and Others]**, this court has held that merely because a person belonging to Scheduled Tribe embarrassing Christianity that would not deprived him of their status and benefit as a member of a Scheduled Tribe and the provisions of Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act 1989 would still applicable to such persons. That was also a case where a mala arayan community person had converted to Christianity and he filed a complaint and that was attempted to be quashed under section 482 of Code of Criminal Procedure alleging that since he converted to Christianity, he is not entitled to get the benefit of that Act and that was repelled by this court. The same view has been reiterated in the decision reported in **AIR 2004 SCW 1064 [State of Kerala and Another VS Chandramohanan], 2005 (3) KLT S.N.19 (Case No.26) [Achamma Thomas Vs S.I of Police]**.

16. Further, it will be seen from the records that when a private complaint was filed which was forwarded to police for investigation under section 156(3) of Code of Criminal Procedure, which ended in filing a refer report and it was against that the private protest complaint was filed. In

Annexure-4 refer report produced by the petitioner himself, it was mentioned that the second respondent belongs to mala arayan Christian community and the revision petitioners belong to Christian community. But what is alleged in the refer report was that, no such incident as alleged by the complainant had taken place and on that basis it was referred as false. So the protest complaint is only a continuation of the refer report filed and as such at this stage court can rely on the allegation in the refer report for the purpose of conferring the status of the complainant to entertain the complaint. So, at this stage this court cannot go in that question as on the basis of the allegations and the observations in the refer report shows that he belongs to mala arayan Christian community and in view of the dictum laid down on the above decisions, merely because he had converted to Christianity will not take away his status and make him out of the purview of the protection provided under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. So, that cannot be a ground at this stage to quash the proceedings as against the petitioners.

17. There is no dispute regarding the fact that after the refer report complainant is entitled to file a protest complaint on that basis the learned Magistrate can take cognizance if there is prima facie evidence to proceed against them. Further, in the

decision reported in **2011(2) KLT S.N.79 (Case No.98) [Arumugam Servai Vs State of Tamil Nadu]**, the Hon'ble Supreme Court has held that while interpreting section 3(I) (x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 court has take into account popular meaning of the word, which it has acquired by usage and not the etymological meaning. Further, in the same decision it has been observed that using of the words relating to the religion has to be considered by the courts depending upon the circumstances under which and the demur in which it has been used by the parties at a particular situation.

18. Further, in the decision reported in **2008(4) KLT S.N.6 (Case No.8) Swaran Singh Vs State)** the Hon'ble Supreme Court has held that section 3(I) (x) does not use the expression public place but instead the expression used is "in any place within public view". In our opinion, it is clear distinction between the two expressions and one cannot confuse the expression place within public view with expression public place. A place can be a private place but within public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or Municipality or other local body or gaon sabha or any instrumentality of the state and not by a private person or by a private bodies. So, it

is clear from this that even if an incident alleged under the Act has happened in a private place, if it is in the public view, then the provisions of section 3(I) (x) will be attracted.

19. Further, in the decision reported in **2009(7) SCC 194 [Rambabu Vs State of Madhya Pradesh and Others]**, the Hon'ble Supreme Court has held that the question is not whether there was any truth in the allegations made or whether on the basis of the allegations a cognizable offence has been alleged and the Magistrate has taken cognizance under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. If there is prima facie evidence to attract such an offence, the court need not go into the truthfulness of the allegations made as it is a matter to be considered by the court on the basis of evidence and in such circumstances it is not proper for the court to invoke the power under section 482 of Code of Criminal Procedure to quash the proceedings.

20. With this principles in mind, the question has to be considered in this case. The allegations in the complaint will go to show that when the complainant had gone to his property for constructing a road along with his friends, an incident had happened during which the allegation was that he was abused by using his caste name and that was done by the accused Nos. 1 and 2, who are the revision petitioners 1 and 2 in this case.

He had no case in that complaint at that stage, the third accused who is the third revision petitioner herein had got any role. Further in the subsequent paragraph of the complaint the allegation was that the third accused threatened him over telephone. He had no case that at that time he had used his caste name. Even assuming that he had used his caste name at that time, it cannot be said that the words were used in the public view and there is a possibility of public hearing that also. So, under the circumstances, there is some force in the submissions made by the counsel for the revision petitioner's that even assuming that the entire allegations are accepted, there is no offence is made out as against the third accused, who is the third revision petitioner herein and taking cognizance of the case as against the third revision petitioner for the said offence is unsustainable in law and the same is liable to be quashed as there is no necessity for him to face the trial since the allegations are not sufficient to attract the offence alleged as against him and this is a case where the power under section 482 of the Code of Criminal Procedure has to be invoked to prevent abuse of process of court as against that petitioner is concerned. **(See 1997 (1) KLJ 280 [E.K.Nayanar Vs. M.A.Kuttappan])**

21. As regards the other petitioner's are concerned, the

allegations made in the complaint and the evidence adduced on the side of the complainant will go to show that the alleged impugned words were spoken by the accused Nos.1 and 2, in the presence of certain persons present who came along with the complainant to form the road and they have heard the same and the allegations also will go to show that on account of the abusive words made by calling him by using the case name caused humiliation to him and that was the impression perceived by the witnesses also. Further, the way in which these words were used, at this stage, it cannot be said that it was not spoken with an intention to humiliate him. So, under the circumstances, taking cognizance of offence for the offence under section 3(I) (x) at this stage as against the revision petitioners 1 and 2 cannot be said to be illegal and no illegality has been committed by the court below in taking cognizance as against the revision petitioners 1 and 2 for the said offence and the same cannot be quashed invoking the power under section 482 of the Code of Criminal Procedure at this stage.

22. The other contentions raised by the counsel for the second respondent that the revision itself is not maintainable has no substance. The decisions relied on by the counsel for the second respondent namely, **2008 CRI.L.J.113 (Hira Lal Vs State of U.P and Another]** and **1992 CRI.L.J.2032**

[Murlidhar Vs State of U.P. and Another] are not applicable to the facts of this case as those decisions were not relating to a case where a revision has been filed against taking cognizance of the case. Further, taking cognizance of the case if quashed by the court will terminate the proceedings itself which is a final order. The question as to whether it is liable to be set aside or not is not a ground to come to the conclusion regarding the maintainability of the revision. Further, taking cognizance of the case, as far as the revision petitioners are concerned, is an intermediate order affecting the right and they are entitled to challenge of the same by invoking the revisional jurisdiction under section 397 of the Code of Criminal Procedure. So, the submission made by the counsel for the second respondent that the revision is not maintainable against taking cognizance is not sustainable in law and the same is liable to be rejected.

22. In view of the discussions made above, the revision petition is allowed in part. The order taking cognizance of the case as against the third revision petitioner, who is the third accused in the lower court is completely quashed.

Taking cognizance of the case as against the revision petitioners 1 and 2 in respect of offences under section 3(I), (iv), (v) and (viii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is quashed. But this court

sustains the order of the court below taking cognizance of the case as against the revision petitioners 1 and 2 under section 3 (I) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and the court below is entitled to proceed with the case as against the revision petitioners 1 and 2 for the above said offence in accordance with law. It is made clear that any observation made in this petition will not affect the right of the revision petitioners 1 and 2 to raise their contentions before the trial court and the trial court considering those contentions and passing appropriate orders on the basis of the evidence available at the final stage of the case in accordance with law. Revision petitioners 1 and 2 are directed to appear before the court below on 26.02.2015. The interim order of stay granted is vacated and CrI.M.A.No.2736 of 2013 is dismissed.

With the above direction and observation, the revision petition is allowed in part. Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.RAMAKRISHNAN, JUDGE

R.AV

//TRUE COPY//

PA TO JUDGE