

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1327 of 2015 ()

ORDER DATED 20.3.2012 IN C.M.P.No.138/2012 IN C.C.No.1164/2009 OF THE
JUDICIAL FIRST CLASS MAGISTRATE COURT, KOYILANDY

REVISION PETITIONER/ACCUSED NO.4.:

KUNHIRAMAN P.M
S/O.KANNAN, PALLITHAKANDY MEETHAL HOUSE, MANIYOOR P.O.
KOYILANDY, KOZHIKODE DISTRICT.

BY ADV. SMT.K.DEEPA (PAYYANUR)

RESPONDENTS/STATE/COMPLAINANT & ACCUSED NOS.1 AND 2:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, PIN-682031.
 2. SREEJAN
S/O.SEKHARAN, VAYAL PURAYIL HOSUE, EAST ROAD
KOYILANDY, PIN-674336.
 3. RAMAKRISHNAN
S/O.KUTTY, VADAKKE VENNOT KUNIYIL HOUSE, MANAMAL
ANELA ROAD, KOYLANDY, PIN-674 336.
 - * 4. JANU
W/O.KUTTY, VADAKKE VENNOT KUNIYIL HOUSE, MANAMAL
ANELA ROAD, KOYLANDY. (DIED). - DELETED
- * THE FOURTH RESPONDENT IS REMOVED FROM THE PARTY ARRAY AT THE
RISK OF THE PETITIONER AS PER ORDER DATED 15.10.2015 IN
CRL.M.A.NO.5738/2015 IN CRL.M.A.NO.5281/2014 IN CRL.R.P.NO.1327/2015.

R2 BY ADV. SRI.P.R.SREEJITH
R2 BY ADV. SRI.M.PROMODH KUMAR
R BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 26-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

ANNEXURE I: TRUE COPY OF THE PRIVATE COMPLAINT IN C.C.1164/2009 OF THE JUDICIAL FIRST CLASS MAGISTRATE, KOYILANDY.

ANNEXURE II: TRUE COPY OF THE DEPOSITION OF THE PETITIONER, WHO WAS EXAMINED AS PW5 IN C.C.1164/2009 OF THE JUDICIAL FIRST CLASS MAGISTRATE, KOYILANDY.

ANNEXURE III: COPY OF THE PETITION FILED BY THE COMPLAINANT AS CMP 138/2012 IN C.C.1164/2009 OF THE JUDICIAL FIRST CLASS MAGISTRATE, KOYILANDY.

ANNEXURE IV: CERTIFIED COPY OF THE ORDER DATED 20.03.2012 IN CMP 138/2012 IN C.C.1164/2009 OF THE JUDICIAL FIRST CLASS MAGISTRATE, KOYILANDY.

ANNEXURE V: TRUE COPY OF THE ORDER DATED 21.07.2014 OF THIS HONOURABLE COURT IN CRL.R.P.NO.1417/2012.

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No. 1327 of 2015

Dated this the 26th day of October, 2015.

ORDER

The revision petitioner is the additional fourth accused in C.C.No.1164 of 2009 on the files of the Court of the Judicial Magistrate of First Class, Koyilandy.

2. The second respondent herein filed a complaint before the court below against the original accused Nos.1 and 2 alleging offences under Sections 465, 468 and 471 r/w 34 IPC. The above complaint was forwarded to the police by the learned magistrate for investigation and report under Section 156 (3) Cr.P.C. The police, after completing the investigation, filed a refer report before the court below. Thereafter, the present complaint was filed by the second respondent herein before the court below.

3. After the stage of recording of evidence under Section 244 of the Code, C.M.P.No.138 of 2012 was filed by the second respondent herein before the court below praying

for impleading additional third and fourth accused. The court below allowed the said application.

4. The third accused challenged the said application before this court in revision. As per order dated 21.07.2014 in Crl.R.P.No.1417 of 2012, a learned Single Judge of this Court set aside the order of the court below arraying additional third accused in the case. The revision petitioner herein is the additional fourth accused, who challenges the order of the court below impleading him as the fourth accused under Section 319 Cr.P.C., in this revision petition.

5. Heard.

6. The case of the second respondent is that an extent of 27 cents of land and a house therein in Re-Sy.No.53/4 in Panthalayani Amsom, Panthalayani Village, originally belonged to the father of the mother of the second respondent herein, namely, Kutty. The said Kutty expired in the year 1985. After his death, his property devolved upon his children in his first wife including the third accused, his fourth wife namely, Janu

and her children. Among the legal heirs, the brother of the third accused, namely, Narayani died in the year 1995. After the death of Narayani, her share devolved upon the second respondent herein, his father Sekharan and his sister Jayasree. The original second accused was the fourth wife of late Kutty. The first accused is the son of late Kutty and Janu. To defeat the joint ownership and possession of the second respondent herein and others, who are the legal heirs of the first wife of Kutty, the original accused with fraudulent intention, colluded and fabricated documents and effected mutation in the village and revenue records and obtained Thandaper in the name of Janu and remitted the land tax. The mutation of ownership of the house was also effected in the Municipality Assessment Register in the name of Janu. Based on the same, O.S.No.261 of 2008 was filed before the civil court and an ad-interim injunction was granted against the second respondent herein and others.

7. After recording the evidence under Section 244

Cr.P.C., an application namely, C.M.P.No.1282 of 2011 was filed by the second respondent herein before the court below to add the third and the fourth accused invoking Section 319 Cr.P.C. on the basis of the evidence already brought out at that stage. However, the court below dismissed the said application on 23.04.2011 holding that sufficient materials were not available there to indicate that the additional fourth accused was the Village Officer at the relevant time and also to indicate that the additional third accused shared the common intention. Thereafter, PW3 and PW5 were recalled and further examined. During the examination, PW5 stated that he issued Exts.P11 and P12 tax receipts in respect of the properties without verifying any document. PW5 further stated that the entire burden relating to the tax receipt was upon the Village Officer. PW5 also stated that enquiry should be conducted by the Village Officer before issuing tax receipt to the parties. On the basis of the said evidence of PW5, the fourth accused was arrayed as an accused invoking Section 319 Cr.P.C. by the

court below. Relying on the evidence of PW3, the additional third accused was also impleaded.

8. The learned counsel for the revision petitioner has submitted that there is clear bar under Section 132 of the Evidence Act in arraying a person as an accused on the basis of the statement given by him as a witness compulsorily and since the revision petitioner was impleaded as the additional fourth accused in the case, on the basis of his own statement as PW5 compulsorily, the order passed by the court below cannot be sustained. Section 132 of the Evidence Act provides that a witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind. The proviso to Section 132 provides that no such answer, which a witness shall be

compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer. The Apex Court in **R. Dineshkumar alias Deena v. State, Rep.by Inspector of Police and others (AIR 2015 SC 1816)** held that proviso to Section 132 of the Evidence Act is a facet of the rule against self-incrimination and the same is statutory immunity against self incrimination which deserves the most liberal construction and hence, no prosecution can be launched against the maker of a statement falling within the sweep of Section 132 of the Evidence Act on the basis of the "answer" given by a person while deposing as a "witness" before a Court. In this case, since the revision petitioner was added as an accused only on the basis of the evidence given by him as PW5 compulsorily, the order passed by the court below cannot be sustained. Consequently, I set aside the same.

In the result, this revision petition stands allowed, setting aside the order passed by the court below dated 20.3.2012 in C.M.P.No.138 of 2012 adding the revision petitioner as the

additional fourth respondent in C.C.No.1164 of 2009 on the files of the court below.

Sd/-
B. SUDHEENDRA KUMAR
JUDGE

Scl.

True Copy

PA to Judge