

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

Crl.Rev.Pet.No. 2664 of 2008 ()

AGAINST THE ORDER IN CRL.M.P. 2706/2006 of J.M.F.C.,TALIPARAMBA

REVISION PETITIONER(S):

**KUNNEL SREEDHARAN,
AGED 68 YEARS, S/o.KUNJURUKAN,
ALAKODE AMSOM, ARANGAM DESOM,
MANAKADAVU, ALAKODE,
KANNUR.**

BY ADV. SRI.PROMY KAPRAKATT

RESPONDENT(S):

- 1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.**
- 2. K.S.VINCENT,
S/o.SUKUMARAN,
KALAYATHOLIL HOUSE,
HOSDURG TALUK,
CHITTARIKKAL VILLAGE,
NALLOMPUZHA**

R1 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl.R.P.2664 of 2008

Dated this the 9th of October, 2015

ORDER

The revision petitioner, who is the complainant in C.M.P.2706/06 on the file of Judicial First Class Magistrate, Taliparamba challenges the dismissal of the complaint under Section 203 Cr.P.C. Petitioner's case in the lower court is that, on 8.01.06 at 3.30 p.m., the accused with other identified persons armed with deadly weapons trespassed into the court yard of the complainant's house. Out of this, 3 persons entered into the house and tightened a towel on the neck of the complainant, uttered filthy words and intimidated him. Thereafter, they plucked arecanuts, coconuts and uprooted tapioca from the property and transported it in a jeep, thereby, they committed an offence under Section 392, 447, 452, 294 (b) and 506(ii) read with 149 IPC. The above criminal complaint was forwarded to Alakode Police Station, where they registered Crime 19/06. After investigation, they

referred the matter. Subsequently, a protest complaint was filed. In that case, complainant and witnesses were examined. The trial court dismissed the complaint under Section 203 Cr.P.C. Being aggrieved by that, he preferred this revision petition.

2. The object of conferring revisional power to the High Court is to correct miscarriage or failure of justice arising from erroneous orders. While exercising this power, it is justified only to set right grave failure of justice and not merely to rectify every error. The fact that the lower court has taken a wrong view of law or misapprehended the evidence on record cannot be a reason to interfere unless it has resulted in grave miscarriage of justice. The revisional jurisdiction is supervisory jurisdiction to find out the illegality, irregularity in the order or sentence or proceedings of the Court below.

3. In this context, I have considered the observations made by the trial court. In its discussion, it is clear that

the revision petitioner gifted 75 cents of property in favour of the accused, who is his son-in-law. Subsequently, he cancelled the registered gift deed and a suit is pending before Munsiff Court, Taliparamba as O.S.155/04. The right in the property was finally not decided in that case. In this context, the trial court opined that, no documents were produced in the trial court to prove the possession over the property. But the evidence of the independent witness is not sufficient to prove the alleged overt act. The trial court admitted that usufruits like, coconut, arecanut and tapioca were removed by the complainant. The possession of the property was not proved in the trial court, the learned Magistrate was reluctant to take cognizance of the offence under Section 203 of the Cr.P.C.

4. Section 203 of the Cr.P.C. says about dismissal of the complaint by a Magistrate if, after considering the statements on oath of the complainant and of the witnesses and the result of the inquiry or investigation (if

any) under Section 202, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for doing so. On a perusal of the Section, it is clear that while taking cognizance of an offence on a complaint, the Magistrate has to record the reason to proceed with the case. For that, he has to assess the averments in the complaint, the statement made by the complainant and the oral evidence adduced by the witness, the result of any investigation or enquiry under Section 202 etc. The primary responsibility of the Magistrate is to apply his mind and analyze the materials to form his own opinion, whether there is sufficient ground for proceeding. This view was expressed by Apex Court in **Pramatha Nath Taluktar Surendra Mohan Basu V. Saroj Ranjan Sarkar (AIR 1962 SC 876)**. The learned Magistrate opined that no evidence has been adduced to prove the possession over the property and the evidence of the independent witness is not believable and he

dismissed the complaint. I find no illegality in the order and there is no merit in this revision petition and it is dismissed accordingly.

STK

//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE