IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

Crl.Rev.Pet.No. 1920 of 2014 ()

AGAINST THE JUDGMENT IN CRA 363/2013 of DISTRICT & SESSIONS COURT, PALAKKAD, DATED 14.08.2014

AGAINST THE JUDGMENT IN ST 1197/2008 of JUDICIAL FIRST CLASS MAGISTRATE, ALATHUR, DATED :21.10.2013

REVISION PETITIONER/APPELLANT/ACCUSED:-:

SAJEEV,
S/O.SAHADEVAN, KUNNAPARAMBU, MUDAPPALLUR
ALATHUR, PALAKKAD.

BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENTS/RESPONDENTS/STATE AND COMPLAINANT:-:

1. ALATHUR GRAMA PANCHAYATH,
   REPRESENTED BY ITS SECRETARY, ALATHUR
   PALAKKAD - 678 541.

2. STATE OF KERALA,
   REPRESENTED BY PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM - 682 031.

R1 BY ADV. SRI.P.RAVINDRA NATH
R BY PUBLIC PROSECUTOR

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

B.SUDHEENDRA KUMAR, J.

-- -- -- -- -- -- -- -- -- -- -- -- --

Crl.R.P. No. 1920 of 2014

-- -- -- -- -- -- -- -- -- -- -- -- -- --

Dated this the 10th day of September, 2015

ORDER

The revision petitioner is the accused in ST 1197/2008 on the files of the Court of Judicial Magistrate of First Class, Alathur.

2. The trial court convicted the revision petitioner under Section 210 of Kerala Panchayath Raj Act r/w rule 27 of Panchayath Raj (Taxation and Appeal Rules 1996) and directed him to pay an amount of Rs.1,09,452/- to the complainant within 30 days. A default clause for simple imprisonment for six months was also awarded by the trial court. The appeal filed against the said conviction and order of compensation was dismissed by the appellate court. Aggrieved by the said conviction and order of compensation, this revision petition has been filed.

3. Heard both sides.

4. The prosecution allegation can be briefly stated as follows:

The revision petitioner was a successful bidder of a comfort station belonging to Alathur Grama Panchayath for the period 2007-2008. However, he failed to remit the balance bid amount of Rs.80,561/-. Demand notice was issued. After complying with the statutory formalities, a complaint was filed before the trial court.

5. Before the trial court, PW1 and PW2 were examined and Exts.P1 to P9 were marked for the prosecution. Exts. D1 to D3 were marked for the defence.

6. The learned counsel for the revision petitioner has argued that there was neither any acceptance nor any confirmation of the auction by the Panchayath within the period stipulated and no agreement in this regard was executed by the revision petitioner and in the said circumstances, the revision petitioner is entitled to be acquitted.

7. The courts below relied on the evidence of PW1 and

PW2 and Ext.P8 agreement and found that there was confirmation of the bid. However, the learned counsel for the revision petitioner has argued that Ext.P8 agreement was not executed by the revision petitioner. Ext.D3 is the report of the handwriting expert, which would show that it was not possible for the expert to arrive at any definite conclusion regarding the authorship of the signatures in Ext.P8 agreement. However, disregarding the said report, the courts below accepted Ext.P8 as a genuine agreement executed by the revision petitioner with the Panchayath, on the reason that PW1 and PW2 had given evidence that Ext.P8 was executed by the revision petitioner.

8. Ext.D1 is admittedly a notice issued by the Special Grade Secretary of Alathur Grama Panchayath to the revision petitioner, requiring the revision petitioner to execute an agreement in a stamp paper for Rs.5,015/-, which is equivalent to 5% of the auctioned amount, within 3 days from the date of receipt of Ext.D1. It is stated in Ext.D1 that in the event of failure to execute the agreement

as required in Ext.D1, the auction would be cancelled. PW1 and PW2 have no case that the revision petitioner executed any agreement after the issuance of Ext.D1 agreement.

9. Ext.D1 notice is admitted by PW1, who is the Secretary of the Grama Panchayath. Since the revision petitioner did not execute any agreement as required in Ext.D1, it was unlikely that the auction would be finalised and confirmed in favour of the revision petitioner. PW1 clearly stated that it is necessary to deposit 1/3rd of the auctioned amount within 15 days of bidding the auction. However, the evidence of PW1 coupled with Ext.D2 would show that the amount was deposited by the revision petitioner only after 7 months of the auction. The auction was on 23.03.2007 and the amount was deposited only on 04.10.2007. The amount deposited by the revision petitioner was only 25% of the auctioned amount. As per the evidence of PW2, 1/3rd of the auctioned amount should be deposited with the Panchayath within 15 days, for confirming the auction. In this case, 25% of the amount

alone was deposited by the revision petitioner and that itself only after a period of nearly 7 months. It is not born out from the records as to how the auction could be confirmed without depositing 1/3rd of the auctioned amount as stated by PW2.

10. The above discussion would show that the contention of the revision petitioner that he did not execute Ext.P8, appears to be more probable. The revision petitioner was bound to pay the amount only after confirming the auction. No material has been produced before the court to indicate that the auction was confirmed by the Panchayath in favour of the revision petitioner. There was also no material before the court as to how the auction could be confirmed in favour of the revision petitioner particularly when the revision petitioner did not comply with the mandatory requirement of depositing 1/3rd of the auctioned amount within 15 days of the auction. It is also not discernible as to how the auction could be confirmed even in the absence of an agreement as envisaged in Ext.D1

notice. It is true that the revision petitioner participated in the auction. However, in the absence of any material to indicate that the auction was confirmed in favour of the revision petitioner, no prosecution envisaged under Section 210 of Kerala Panchayath Raj Act can be sustained against the revision petitioner.

11. Having gone through the relevant inputs, I am of the considered view that the appreciation of the evidence by the courts below in this case is perverse and incorrect. Since there is no material to indicate that the auction was confirmed in favour of the revision petitioner as argued by the learned counsel for the revision petitioner, the conviction and order of compensation awarded by the courts below cannot be sustained and consequently, I set aside the same.

In the result, this revision petition stands allowed, setting aside the conviction and order of compensation passed by the courts below under Section 210 of Kerala Panchayath Raj Act r/w rule 27 of Panchayath Raj (Taxation and Appeal Rules 1996). Needless to state that the revision petitioner is entitled to reimbursement of the amount, if any, deposited by the revision petitioner before the court below, pursuant to any direction by this Court.

Sd/-
B.SUDHEENDRA KUMAR
JUDGE

//TRUE COPY//

P.A. TO JUDGE

sm/