

Biju Vs. State of Kerala

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Court : Kerala

Decided On : Jan-01-2014

Judge : Honourable Mr.Justice Thomas P.Joseph

Appellant : Biju

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE HARUN-UL-RASHID WEDNESDAY, THE1T DAY OF JANUARY201411TH POUSHA, 1935 CrI.MC.No. 6266 of 2013 ()
----- AGAINST THE

JUDGMENT

IN CC8522005 of JUDICIAL FIRST CLASS MAGISTRATE COURT, ALATHUR O.R.NO. 9/1998 OF NELLIAMPATHY FOREST RANGE OFFICE , PALAKKAD PETITIONERS/ACCUSED NOS1& 3: ----- 1. BIJU AGED23YEARS S/O.KURIAKOSE, ELEVENKUDI HOUSE, KAYARADI ALATHUR, PALAKKAD DISTRICT2 SAJEEVAN AGED21YEARS PARAMBIKKATTIL HOUSE, VALLAPPADI, PERAMBRAM KODAKARA THRISSUR BY ADVS.SRI.P.SANTHOSH (PODUVAL) SMT.R.RAJITHA RESPONDENT/STATE: ----- STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM682031 BY PUBLIC PROSECUTOR SMT.S.HYMA THIS CRIMINAL

MISC. CASE HAVING BEEN FINALLY HEARD ON 01-01-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.MC.No. 6266 of 2013 ()

----- APPENDIX PETITIONER(S)' EXHIBITS
----- ANNEXURE A TRUE COPY OF THE CHARGE SHEET IN O.R NO998 OF NELLIAMPATHY FOREST RANGE ANNEXURE B TRUE COPY OF

JUDGMENT

DATED 08/12/2005 IN C.C69501 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, ALATHUR RESPONDENT(S)' EXHIBITS : NIL
----- \\ TRUE COPY PA TO JUDGE jm/ HARUN-UL-RASHID, J.

----- CrI. M.C No. 6266 of 2013 ----- Dated this the 01st day of January, 2014.

ORDER

Petitioners are the accused Nos. 1 and 3 in O.R. No. 9/98 of Nelliampathy Forest Range. The offences alleged are punishable under Sections 27(1)(e)(iii) and (iv) of Kerala Forest Act. The CrI.M.C is filed seeking to quash charge sheet and all further proceedings in C.C No. 852/2005 now pending as LPR No. 1/2010 on the file of Judicial First Class Magistrate Court, Alathur.

2. There are 8 accused in the crime. All accused except accused Nos. 1, 3 & 8 faced trial and they were acquitted by the Judicial First Class Magistrate Court, Alathur. Annexure-B is the copy of the judgment dated 08/12/2005 in C.C No. 695/01.

3. The accused No. 5 confessed in P3 statement that four persons along with him had committed the offence of tress-pass and felling of trees along with accused Nos. 2 and 3. After referring to Annexure-P2 mahazar and P3 confession statement, the learned Magistrate found that the discrepancies in the extract of confession contained in P3 and P4 confession given by A5 are not explained by PW2. It was CrI. M.C No. 6266 of 2013 2 also observed that there are no

independent attestors to the statement purportedly recorded by PW2. The learned Magistrate concluded that P3 statement cannot be relied upon without corroboration from other sources and that the discrepancies discussed above appearing in P3 and P4 remains unexplained. In the circumstances, the court found that complainant has not succeeded in proving the offences against the accused. The learned Magistrate found that accused Nos.A2, A4 to A7 are not guilty of having committed the offence.

4. The case against the remaining accused was split up and refiled as C.C No. 852/05 and is now pending as LPR No. 01/2010. It is submitted that in the light of the acquittal of the co-accused there is no scope for proceeding against the remaining accused since the prosecution has mainly relied upon the confession statement of the fifth accused and that the court below has disbelieved the confession made by the fifth accused. Since the other accused were acquitted, for the very same set of reasons, this Court is of the view that no purpose would be served by continuing the prosecution against the petitioner. Crl. M.C No. 6266 of 2013 3 Accordingly, Crl.M.C is disposed of quashing Annexure-A charge sheet and all further proceedings in C.C No. 852/2005 now pending as LPR No. 1/2010 on the file of Judicial First Class Magistrate Court, Alathur. HARUN-UL-RASHID, JUDGE. Isn

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