

Safia Vs. Pokker

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SooperKanoon Citation : sooperkanoon.com/1123319

Court : Kerala

Decided On : Jan-28-2014

Judge : Honourable Mr.Justice N.K.Balakrishnan

Appellant : Safia

Respondent : Pokker

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE N.K.BALAKRISHNAN TUESDAY,THE28H DAY OF JANUARY20148TH MAGHA, 1935 CRL.A.No. 1162 of 2006 (C) ----- AGAINST THE

JUDGMENT

IN CC682004 of JUDL.MAG. OF FIRST CLASS, PAYYOLI DATED2903-2000 APPELLANT(S)/COMPLAINANT: ----- SAFIA, W/O. ABDURAHIMAN, AGED36YRS, PUTHOOR VEETIL, THURAYOOR AMSOM DESOM QUILANDY TALUK. BY ADV. SRI.V.V.SURENDRAN RESPONDENT(S)/ACCUSED AND STATE: ----- 1. POKKER, S/O. MOOSA, CHATHOTH PADIKKAL HOUSE, THURAYOOR AMSOM KULUPPA DESOM, QUILANDY TALUK.

2. ABBAS S/O. ASSAINAR, NADEMMAL HOUSE, THURAYOOR AMSOM, KULUPPA DESOM QUILANDY TALUK.

3. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA. R1 & R2 BY ADV. SRI.P.V.KUNHIKRISHNAN R3 BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28-01-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: JUDGE N.K. BALAKRISHNAN, J.

----- Crl.A. No. 1162 of 2006
----- Dated this the 28th day of January, 2014

JUDGMENT

This appeal is filed by the complainant challenging the verdict of acquittal passed by Judicial First Class Magistrate, Payyoli. The complaint was filed alleging offences punishable under sections 452, 294(b), 354, 506(1) and 427 r/w 34 of I.P.C.

2. According to the complainant, the incident took place at about 10.00 p.m. on 16.12.1999. She and PW3 - her son and another child were sitting in the verandah of their house. The two accused persons, according to the complainant, came on a motor cycle and thereafter they trespassed into the verandah of the house. A1 was holding a knife, it is alleged. The accused were stated to have used obscene words against PW1 and threatened her showing the Crl.A. No.1162/2006 -2- knife. It was also stated that A1 had caught hold of the hand of PW1 and thereby her modesty was outraged. It was stated that the accused sped away on their motorcycle. A complaint was filed before the police. The police investigated the case and the Investigating Officer (D.W.1) referred the case as false. Thereupon, a private complaint was filed. After cognizance was taken and process was issued against the accused, they appeared in court.

3. PWs 1 to 3 were examined and Exhibits P1 and P2 were marked. Ext.P1 is the refer notice issued by the police. Ext.P2 is the original complaint filed by PW1. Ext.D1 is the photocopy of the final report filed by DW1 as per which the case was

referred as false. The evidence given by PWs 1 to 3 was analysed by the learned Magistrate. CrI.A. No.1162/2006 -3- 4. Originally, the complaint was dismissed by the learned Magistrate under section 203 of Cr.P.C., against which a revision was filed by the complainant. The learned Sessions Judge directed the Magistrate to consider the matter afresh. After conducting enquiry, the case was taken on file and process was issued.

5. It is contended by the defence that the present complaint is only a counter blast to the case, which had been filed earlier against the husband of PW1, in which he was convicted by the Magistrate. A warrant was issued against him. While that warrant was pending, this complaint was filed. It is pointed out by the defence that the accused in that case (PW1's husband) moved this court and an order of bail was obtained. It was only after he was released on bail this complaint was filed at the instigation of her husband, the defence contended. CrI.A. No.1162/2006 -4- 6. The fact that the police officer, after conducting investigation, referred the case as false, also has to be gone into. PW2, who claimed to have witnessed the incident, is residing 5 kms away from the scene of occurrence. His presence at the scene of occurrence at about 10.00 p.m. itself was found unbelievable and unconvincing. That apart, it was also contended that PW2 was a person who was given visa to Bahrain, arranged by PW1's husband. Though that suggestion was denied by PW2, the totality of the circumstances did persuade the Magistrate not to act on the testimony of PW2. The evidence given by PWs 1 and 2 did not infuse confidence in the mind of the Magistrate. Though it was stated that damage was caused by throwing stones at the window, no mahazar was prepared for that purpose. In the particular factual scenario, the learned Magistrate cannot be found fault with for not acting upon the evidence of PWs 1 to 3 as well. CrI.A. No.1162/2006 -5- 6. In an appeal against acquittal, the court cannot supply any new reason to find the accused guilty. The view taken by the trial court has to be given due weight. I find no illegality in the appreciation of the evidence done by the learned Magistrate. The verdict of acquittal is only to be confirmed. In the result, this Criminal Appeal is dismissed. Sd/- N.K. BALAKRISHNAN, JUDGE //True Copy// P.A. to Judge jjj