

Rep.by Public Prosecutor Vs. Thulasi

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Court : Kerala

Decided On : Feb-26-2014

Judge : Honourable Mr. Justice B.Kemal Pasha

Appellant : Rep.by Public Prosecutor

Respondent : Thulasi

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE
HONOURABLE MR. JUSTICE B.KEMAL PASHA WEDNESDAY, THE 26TH DAY
OF FEBRUARY 2014 7TH PHALGUNA, 1935 CrI.Rev.Pet.No. 2662 of 2003 ()
----- AGAINST THE

ORDER

/

JUDGMENT

IN CC4041998 of J.M.F.C.-II(FOREST OFFENCES), PUNALUR DATED 0912-
1999 REVISION PETITIONER(S)/COMPLAINANT:
----- STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC
PROSECUTOR SRI.A.J.

JOSE AEDAIDOI. RESPONDENT/ACCUSED(S): ----- 1.
THULASI, AGED 42 YEARS, S/O RAGHAVAN, SUDHEESH BHAVAN,

THERMALA VILLAGE, PATHANAPURAM TALUK.

2. VISWAN, AGED 48 YEARS, S/O VELU ACHARY, MALAVADAR COLONY, URUKUNNU, EDAMON VILLAGE., PATHANAPURAM TALUK.

3. THANKAPPAN, AGED 44 YEARS, S/O VELLADAR, URUKUNNU, MALAVEDAR COLONY, EDAMON VILLAGE, PATHANAPURAM TALUK. R1 TO 3 BY ADV. SRI. PAULY MATHEW MURICKEN THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26.02.2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: B. KEMAL PASHA, J
----- Crl.R.P.No. 2662 of 2003
----- Dated this the 26th day of February, 2014

ORDER

Alleging total irregularity, illegality and impropriety in the procedure adopted by the learned Judicial First Class Magistrate's Court-II, (Forest Offences), Punalur, in discharging the accused in C.C.No.404/98, through the impugned order dated 9.12.99, the State has come up in revision. The case before the court below is as a result of a complaint filed by the Range Officer, Anchal Forest Range, against the respondents herein as A1 to A3, alleging offences punishable under Section 27(1)(e)(iii) and (iv) of the Kerala Forest Act, alleging trespass by the accused on 10.07.1998, into 1967 Teak Plantation at Urukunnu in Eroor Reserve Forest, and also by alleging that they had felled certain teak trees and attempted to remove the Crl.R.P.No. 2662 of 2003 :- 2:- same by cutting into pieces, from the reserve forest thereby causing a loss of 500 to the Government.

2. The records available in this case, clearly reveal patent illegality, irregularity and impropriety committed by the court below, in disposing of the matter, by way of discharging the accused under Section 249 Cr.P.C., through the impugned order. The contents of the impugned order are quite contrary to the contents of the order sheet in the case. The impugned order shows that in spite of ample opportunity given to the complainant to furnish evidence, "appearance of the complainant could not be secured with". It was further held, "prosecution could not furnish any satisfactory explanation for the non-appearance of complainant on those dates

fixed for hearing the case".

3. The contents of the order sheet of the case show a totally different state of affairs. The order sheet shows that it was on 22.06.99 for the first time summons was ordered to the complainant and CW1. The case was posted to 29.08.1999. What happened on 29.08.1999 is not discernible from the order CrI.R.P.No. 2662 of 2003 -:3:- sheet. It seems that on 30.08.1999 there was no sitting and through a notification the said case was adjourned to 24.9.1999. On 24.9.1999 the complainant was present and he was examined as PW1, and Ext.P1 was marked. It seems that the complainant and the accused were ordered to be appear on 9.11.1999. On 9.11.1999 the case was adjourned through notification to 9.12.1999. On 9.12.1999 the court below has recorded in the order sheet, "All accused present. Witness absent. No representation. Hence evidence closed. Discharged u/s 249 Cr.P.C." 4. Heard the learned Public Prosecutor Sri.A.J.

Jose Aedaodi, for the State and the learned counsel Sri. Pauly Mathew Muricken, for the respondent.

5. After the examination of the complainant as PW1 and the marking of Ext.P1, the court below had ordered for the appearance of the accused and the complainant on the next posting date. What can be expected is that the court below wanted to frame the charge on the said adjourned date. Over and above it, even on that adjourned date i.e., on 9.11.99, the CrI.R.P.No. 2662 of 2003 -:4:- case was not taken up and it was adjourned through notification to 9.12.99. In such a case, if as a matter of fact, the court below wanted any further evidence from any of the other witnesses of the complainant, the court below ought to have granted at least one more opportunity to the complainant to produce the witness as the case was not taken up on the date on which the complainant was ordered to appear.

6. Apart from all the above, it seems that the court below has suppressed the examination of the complainant as PW1 and the marking of Ext.P1, in the impugned order. The impugned order is passed as if the complainant had not appeared before the court below. The impugned order does not show that the complainant was examined or any document was marked.

7. The impugned order clearly unfurls the utter carelessness and negligence from the part of the court below in dealing with the matter. It seems that unnecessarily a case has been thrown to the dustbin by illegally ordering the discharge of the accused in the case under Section 249 Cr.P.C. In the Crl.R.P.No. 2662 of 2003 - :5:- impugned order it seems that the court below has stated, "According to defence side since it is a false and frivolous case the complainant is purposely evading the process of court. If the complainant has any genuine interest to proceed the case, he ought to have come and conduct the case against the accused." 8. These observations are unfounded and incorrect. The impugned order is illegal, irregular, and improper and the same has resulted in substantial miscarriage of justice. Matters being so, the impugned order is liable to be set aside.

9. In the result, this Crl.R.P. is allowed and the impugned order is set aside. The complaint is restored to file and is remanded back to the court below, for fresh disposal in accordance with law. The parties shall appear before the court below on 26.03.2014. The records shall be sent back at the earliest. Sd/- B. KEMAL PASHA, JUDGE ul/- [True copy] P.S.to Judge. Crl.R.P.No. 2662 of 2003 -:6:- B. KEMAL PASHA, J ***** Crl.R.P.No.2662 of 2003 *****

ORDER

26h day of February, 2014

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