

Biji vs State of Kerala

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Court : Kerala

Decided On : Nov-21-2023

Judge : Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : Crl.Rev.Pet/1187/2018

Appellant : BIJI

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR TUESDAY,
THE 21ST DAY OF NOVEMBER 2023 / 30TH KARTHIKA, CRL.REV.PET NO.
1187 OF 2018

AGAINST FRAMING OF CHARGE DTD.29.08.2018 FROM ORDER

DTD.25.07.2018 IN C.C.NO.76 OF 2008 OF THE JUDICIAL FIRST CLASS
MAGISTRATE'S COURT -III,THRISSUR REVISION PETITIONER/ACCUSED
NO.3:

BIJI AGED 40 YEARS D/O.APPUMON(FORMERLY
W/O.SUNILKUMAR) ST.THOMAS STREET KURIACHIRA DESOM,

OLLUR VILLAGE, THRISSUR TALUK-680306, NOW RESIDING AT KATTIL HOUSE, KATTAKAMABAL DESOM P.O KATTAKAMABAL VILLAGE, THALAPPILLY TALUK, THRISSUR DISTRICT-680544 K.S.HARIHARAPUTHRAN GEORGE MATHEW M.D.SASIKUMARAN SUNIL KUMAR A.G DIPU JAMES SETHURAM DHARMAPALAN BHANU THILAK

RESPONDENTS/STATE & COMPLAINANT:

1 STATE OF KERALA REP.BY S.I OF POLICE, OLLUR POLICE STATION THRISSUR DISTRICT-680008 THROUGH PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM-682031 2 ANTONY S/O.PORINCHU,POOVATHINKAL,CHEROOR DESOM,WILVATAM VILLAGE,THRISSUR TALUK AND DISTRICT-680008. SRI.C.HARIKUMAR SRI.P.S.SIDHARTHAN SRI.RENJITH RAJAPPAN THIS CRIMINAL REVISION PETITION HAVING COME UP FOR

ADMISSION ON 21.11.2023, ALONG WITH CrI.Rev.Pet.1474/2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR TUESDAY, THE 21ST DAY OF NOVEMBER 2023 / 30TH KARTHIKA, CRL.REV.PET NO. 1474 OF 2018 AGAINST THE ORDER DATED 25.07.2018 IN C.C.NO.76 OF 2008 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT - III,THRISSUR PETITIONERS/ACCUSED 1 & 2: 1 SUNILKUMAR, ASST. VICAR, KARIDIAN CIRIYAL CHURCH, KURIACHIRA, S/O.GEORGE CHERUVATHOOR, ST.THOMAS STREET, KURIACHIRA DESOM, OLLUR VILLAGE, THRISSUR TALUK. 2 C.K. SELEENA, W/O CHERUVATHOOR GEORGE, ST. THOMAS STREET, KURIACHIRA DESOM, OLLUR VILLAGE, THRISSUR TALUK. MATHEW JOHN (K) SRI.MATHEW DEVASSI SRI.ABY J AUGUSTINE RESPONDENTS/NOT PARTY & COMPLAINANT: 1 STATE OF KERALA,

REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. 2 ANTHONY, S/O.PORINCHU, POOVATHINKAL, CHEROOR DESOM, WILVATAM VILLAGE, THRISSUR TALUK. SRI.C.HARIKUMAR SRI.P.S.SIDHARTHAN SRI.RENJITH RAJAPPAN THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 21.11.2023, ALONG WITH Crl.Rev.Pet.1187/2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.G. AJITHKUMAR, J.

----- Crl.R.P Nos.1187 and 1474 of 2018
----- Dated this the 21st day of November,
2023

ORDER

The common 2nd respondent filed a complaint before the Judicial Magistrate of the First Class - III, Thrissur alleging commission of offence punishable under Section 406, 415, 418, 420, 468 and 508 r/w Section 34 of the Indian Penal Code, 1860. There were four accused. They appeared before the Magistrate on receipt of summons and in their presence, the complainant was examined as PW1 under Section 244 of the Code of Criminal Procedure, 1973. The learned Magistrate upon considering his evidence and the attending circumstances, as per the order dated 25.07.2018, discharged all the accused for the offences under Section 406, 420, 468 and 418 of the IPC. However, it was ordered that a charge for an offence punishable under Section 508 of the IPC was liable to be framed against the accused. The 3 rd accused filed Crl.R.P.No.1187 of 2018 and accused Nos.1 and 2 filed Crl.R.P No.1474 of 2018 challenging the said order.

2. Heard the learned counsel for the petitioners, the learned Public Prosecutor and the learned counsel for the 2 nd respondent-complainant.

3. As per the impugned order, the petitioners were

discharged of the offences punishable under Sections 406, 420, 468 and 418 of the IPC. Only offence for which the court below found grounds for proceeding against the petitioners is under Section 508 of the IPC. The allegations in the complaint to constitute the offence under Section 508 of the IPC are extracted below:

4 . 1992 - 1, 2 ! 8 2-)o 6 1, 3 !. 1, 3 C C C C! C ! ! ! . ! 1 3 V !. 1, 3
1.4.1995

- 2 1 .12 .1998 - 2 3 -)o 1-)o Y C! 4 12.6.99 , 16.8.99 C C 1, 3 ! .

4. Concerning the said allegations, PW1 testified before the court as follows:

" 1, 2 ! . ! 8 1, 3 . C V C C . 1 -)o ! 1.4.99 2 . ! 2 -)o . 2 . South Indian Bank
2 Y 1, 3 Y.

5. It was on the basis of the said averments in the

complaint and evidence given by PW1 in court, the court below held that an offence under Section 508 of the IPC was prima facie made out and therefore there was ground for proceeding against the petitioners.

6. The learned counsel appearing for the petitioner

would submit that from the evidence of PW1, which is almost the repetition of the averments in complaint, it is quite evident that the transaction was one of debtor - creditor relationship and the allegations are totally insufficient to constitute an offence under Section 508 of the Code. It is pointed out that on receipt of Rs.2,00,000/- on the second occasion, a document evidencing the said payment is immediately issued. As regards the initial payment, which the complainant alleges that it was Rs.8,00,000/-, a document was executed on 15.06.2004. It is true, it is stated in paragraph No.9 of the complaint that the complainant was coerced to agree that the amount due was only Rs.6,30,000/-, out of which Rs.3,30,000/- was already paid in cash.

7. Be that as it may, a document evidencing the said

transaction, which was said to have taken place in the year 1992, was executed. Thus as regards the payment of whole amount, documents were evidently executed by the petitioners concerned.

8. Section 508 of the IPC reads thus:

Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered

by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

9. If a person is compelled to do or omit to do which

he is not legally bound to do or to omit to do, fearing divine displeasure, which the offender had exerted on such person, there will be an offence punishable under Section 508 of the IPC. Here the 2nd respondent paid money to accused Nos.1 and 3 believing their words that they had several domestic issues. The further allegation is that unless paid, they pray for divine displeasure to the 2nd respondent. But when it is the admitted case that documents concerning such transactions were executed by accused persons concerned, the allegation that the 2nd respondent part with money only on account of fearing divine displeasure, stands belied. Once such documents are executed, the transaction became one of a money transaction alone and cannot be treated as commission or omission of an act, which the 2nd respondent was legally bound to do or omit to do. Therefore, even accepting the entire allegation by the 2nd respondent, no offence as defined

in Section 508 of the IPC could be made out. Viewed so, the order of the court below that the petitioners are liable to stand trial for an offence punishable under Section 508 of the IPC is wrong and untenable in law. Hence the impugned order is set aside and this revision petitions are allowed. The petitioners are discharged of the offence under Section 508 of the IPC. Sd/- P.G. AJITHKUMAR JUDGE PV

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