

Eldho Vs. State of Kerala

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Court : Kerala

Decided On : Feb-20-2015

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Eldho

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY, THE 20^H DAY OF FEBRUARY 2015 1ST PHALGUNA, 1936 Crl.Rev.Pet.No. 836 of 2004 ()
----- AGAINST THE

JUDGMENT

IN CRL.A.NO.519/2002 of ADDL. SESSIONS COURT, NORTH PARAVUR DATED 13-02-2004 AGAINST THE

JUDGMENT

IN C.C.NO.430/1999 of JUDICIAL FIRST CLASS MAGISTRATE COURT-I, ALUVA DATED 19-07-2002 REVISION PETITIONER(S)/APPELLANT/ACCUSED.:
----- ELDHO, AREECKAL HOUSE, MEKKADU KARA, NEUMBASSERY VILLAGE, ERNAKULAM DISTRICT. BY ADV. SRI.M.P.ASHOK KUMAR
RESPONDENT(S)/COMPLAINANT.: -----

STATE OF KERALA REP.,. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN. THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Bb K. Ramakrishnan, J.

===== Crl.R.P.No.836 of 2004
===== Dated this, the 20th day of February, 2015.

ORDER

Accused in C.C.No.430/1999 on the file of the Judicial First Class Magistrate Court - I, Aluva is the revision petitioner herein.

2. The revision petitioner was charge sheeted by the Assistant Sub Inspector of Police, Chengamanadu police station in Crime No.279/1998 of that police station under Section 171F of Indian Penal Code.

3. The case of the prosecution in nutshell was that, on 04.11.1998 at 4 p.m., while polling for Parakkadavu Block Panchayath was going on in Govt.L.P.School, Thuruthissery in Nedumbassery village, the accused appeared there and attempted to cast vote in the name of Sathiyandhan, but, he did not succeed and thereby, he had committed the offence punishable under Section 171F of the Indian Penal Code.

4. When the revision petitioner appeared before the court below, the particulars of offence were read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 5 were examined and Crl.R.P.No.836 of 2004 :

2. : Exts.P1 to P3 were marked on their side. After closure of the prosecution evidence, the revision petitioner was questioned under Section 313 of Code of Criminal Procedure, but, he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that he has not committed any offence. No defence evidence was adduced on his side.

5. After considering the evidence on record, the court below found the revision petitioner guilty under Section 171F of the Indian penal Code and convicted him thereunder and sentenced him to undergo simple imprisonment for three months. Aggrieved by the same, he filed Crl.Appeal No.519/2002 before the Sessions Court, Ernakulam which was made over to the Additional Sessions Court, North Paravur, the learned Additional Sessions Judge dismissed the appeal. Aggrieved by the same, the present revision has been filed by the revision petitioner - accused before the court below.

6. Heard the Counsel for the revision petitioner and the Public Prosecutor.

7. The Counsel for the revision petitioner submitted that PWs 1 and 2 did not support the case of the prosecution Crl.R.P.No.836 of 2004 :

3. : and in fact, they did not identify the accused as the person who came and demanded the ballot paper. Further, the polling agent who objected the identity has not been examined. The voters list has not been produced to prove that Sathiyandhan whom the revision petitioner attempted to impersonate has vote in that polling booth. Further, PWs 3 to 5 could not be cross examined and the application for recalling them was not allowed. So, according to the learned Counsel, that has caused prejudice. Further, the sentence imposed is harsh.

8. The concurrent findings of the court below was supported by the Public Prosecutor.

9. The case of the prosecution as emerged from the prosecution witnesses was as follows: On 04.11.1998 at about 4.p.m., while polling of Parakkadavu Block Panchayath was going on in Govt.L.P.School, Thuruthissery in Nedumbassery village and when the name of one Sathiyandhan was called, the accused rushed and asked for the ballot paper and his identity was challenged by the polling agent and he was made to stand aside and this was informed to the polling officer and thereafter, Crl.R.P.No.836 of 2004 :

4. : police came and he was entrusted to the police and crime was registered and the investigation was conducted and final report was filed.

10. PWs 1 and 2 are the polling officer and the second polling officer in the booth. According to them, when one Sathiyandhan's name was called, a person came and asked for the ballot paper and that was objected by the polling agent and there was some quarrel ensued, they informed the presiding officer and thereafter, they continued their work and thereafter, police came and he was taken. PWs 1 and 2 have categorically stated about a person coming when the name of Sathiyandhan was called which was objected by the polling agent and entrusting that person to the presiding officer and then that person being taken by the police. It is true that at the time when they were examined before the court, they have stated that they may not be able to identify the person now. That doesn't mean that it was not the accused who had done the same. Further, PW3 who was the third polling officer also stated that his duty was to supply the ballot paper and the name of one person was called, a person came and polling agent had challenged his identity. But, he had stated that, the CrI.R.P.No.836 of 2004 :

5. : person who came and demanded the vote was entrusted to the police, but, he did not vote and no ballot paper was given to him. Though he did not identify the person from court, he had stated that, the person who came and demanded to vote in the name of the another person was immediately entrusted to the police by the presiding officer. This aspect was not challenged also.

11. Further, PW4 was the presiding officer and he had stated about these aspects and he had also stated that when name of Sathiyandhan was called, one boy came and on seeing him, there was doubt arose and that was challenged by the polling agent and it was revealed that his name was Eldho and it is also revealed that, that person has no vote and he gave Ext.P1 complaint regarding this aspect and police came and took that person. These aspects were supported by the evidence of PW5 the person who registered the crime, arrested the revision petitioner and conducted the investigation as well. PWs 4 and 5 were not cross examined. It is true that the revision petitioner filed a petition for recalling these witnesses. But, reason for non cross examination of the witnesses at the time when they were offered for cross examination was not CrI.R.P.No.836 of 2004 :

6. : mentioned in the petition. Further, under Section 243 of the Code of Criminal procedure, if the witnesses were present and opportunity was given and the defence did not avail that opportunity for cross examination, later, if an application has been filed unless the court is satisfied with the reason for non cross examination, court can reject the application if it is satisfied that it is an attempt to protract the proceedings that such an application has been filed. In this case, no reason was stated in the application for non cross examination of the witnesses at the time when the witnesses were present and offered for cross examination. He had cross examined the other three witnesses earlier. So, under the circumstances, there is no merit in the submission made by the Counsel for the revision petitioner that opportunity to cross examine PWs 4 and 5 were denied and thereby, prejudice has been caused.

12. The fact that he was arrested from the spot by the police on the basis of Ext.P1 complaint given by PW4 has not been challenged. Further, he was taken from the place is also not disputed by the defence. The accused had no explanation as to why he went there and what was the reason for his arrest by the police also at the time when he was examined Crl.R.P.No.836 of 2004 :

7. : under Section 313 of Code of Criminal Procedure. If he had gone there by mistake, he could have stated so at the time when he was examined under Section 313 of Code of Criminal Procedure and that was not done by him. That shows the conduct of the revision petitioner.

13. Section 171F of the Indian Penal Code reads as follows: "Punishment for undue influence or personation at an election - Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both." 14. For the purpose of attracting the offence under Section 171F of Indian Penal Code, it is not necessary that he must impersonate and vote in the name of that person. Even if he had demanded ballot paper impersonating another person, that will be sufficient to attract the offence under Section 171F of the Indian Penal Code. In this case, the evidence adduced on the side of the prosecution proved that when the name of Sathiyandhan was called, the revision petitioner entered

and he demanded the ballot paper since it was objected by the polling agent, he could not succeed in his attempt to impersonate and vote in the name of Sathiyandhan. So, Crl.R.P.No.836 of 2004 :

8. : under the circumstances, courts below were perfectly justified in coming to the conclusion that the accused had committed the offence punishable under Section 171F of the Indian Penal Code and rightly convicted him for the said offence and the concurrent findings of the court below on this aspect do not call for any interference.

15. As regards the sentence is concerned, he was sentenced to undergo simple imprisonment for three months and that was confirmed by the appellate court. He was aged only 26 years at the time of incident. The prosecution has no case that he has got any criminal background. It is true that voting in election process by impersonating another or trying to do the same is a serious one. But, at the same time, considering the age and also considering the time lapse of the incident, this court feels that imposing fine alone will be sufficient as imprisonment is not compulsory as per the provision. So, under the circumstances, sentencing him to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one month will be sufficient and that will meet the ends of justice. So, the sentence imposed by the court below and confirmed by the appellate court is set aside and the same is Crl.R.P.No.836 of 2004 :

9. : modified as follows: The revision petitioner is sentenced to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one month. One month time is granted to the revision petitioner to pay the fine. With the above direction and modification of sentence alone, the revision petition is allowed in part and disposed of accordingly. Office is directed to communicate this order to the court below immediately. Sd/- K.Ramakrishnan, Judge. Bb [True copy] P.A to Judge

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