

Aishama Vs. Moosan

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SooperKanoon Citation : sooperkanoon.com/61026

Court : Kerala

Decided On : Jun-30-2015

Judge : Honourable Mr.Justice K.Harilal

Appellant : Aishama

Respondent : Moosan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL TUESDAY, THE 30^H DAY OF JUNE 2015 9TH ASHADHA, 1937 Crl.Rev.Pet.No. 791 of 2015
----- AGAINST THE

JUDGMENT

IN CRL.MP NO. 106/2015 of ENQUIRY COMMISSIONER & SPECIAL JUDGE, THRISSUR DATED 10-02-2015 REVISION PETITIONER(S)/PETITIONER:
----- AISHAMA, W/O. KUNHIMUHAMMED, KADAVIL PARAMBIL, MALA P.O., VADAMA, THRISSUR. BY ADVS.SRI.SAIGI JACOB PALATTY SMT.ANU S. NAIR RESPONDENT(S)/RESPONDENTS:
----- 1. MOOSAN, S/O. SULAIMAN, VELLEKKATTU KARAVATHUMKUDI HOUSE, CHELAKKULAM KARAYIL, KUNNATHUNADU TALUK, ERNAKULAM-683 562.

2. STATE OF KERALA, REP. BY ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN-682031. R2 BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON3006-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K. HARILAL, J.

----- Crl.R.P. No. 791 of 2015

----- Dated this the 30th day of June, 2015

ORDER

The revision petitioner herein is the petitioner in Crl.M.P.No.106 of 2014 on the files of the Court of the Enquiry Commissioner & Special Judge, Thrissur. The above complaint was filed under Sec.190(1)(a) of the Code of Criminal Procedure seeking to initiate investigation against the 1st respondent herein alleging the commission of the offences punishable under Secs.13(1)(d) read with Sec.13(2) of the Prevention of Corruption Act besides the offences under Secs.120B, 465, 420, 423, 468 read with Sec.34 of the Indian Penal Code.

2. The complainant's case is as follows: The Crl.R.P. No. 791 of 2015 -:

2. :- petitioner and the 1st respondent are the children of late Sulaiman, who had five other children. Under settlement deed No.976/66, their father had settled three items of properties in favour of his seven children which are items 'A' to 'G'. According to the petitioner, apart from the above seven items, the father had another 50 cents of land, forming part of 96 cents, obtained under document No.510 /1105, comprised in Survey No.551/2 of Pattimattom Village. From the above property, 46 cents was given to the share of the 1st respondent and the father died intestate in respect of the remaining 50 cents. But later, under gift deed No.3280/89, the 1st respondent, by abusing his official position, in connivance with other respondents, created a gift deed in favour of the son, the 7th respondent, who was a minor, as if there was mistake in the survey number of the properties. Thus, recitals were incorporated in the said gift deed to make it out that the said 50 cents also was given to him under settlement deed No.976/66. Such a Crl.R.P. No. 791 of 2015 -:

3. :- mischief was done to knock off the 50 cents of land in respect of which father had died intestate. Actually, the 1st respondent had no manner of right to incorporate recitals altering the survey number and boundaries of the said 50 cents. Thus, they have created a false settlement deed in favour of his son in connivance of the other accused to snatch away the property of the petitioner and thereby committed the offences alleged against them.

3. Pursuant to the direction of the court, the petitioner has produced additional documents before the Special Court. A copy of the final judgment in O.S.No.109/97 of the Principal Sub Court, North Parur and a copy of the judgment in O.S.No.45/12 of the Sub Court, Perumbavoor were produced. The court below has examined the entire records produced by the petitioner, in view of the averments in the suit. After considering the allegations and the records produced by the petitioner, the Special Court dismissed the complaint on a finding that there is no prima facie Crl.R.P. No. 791 of 2015 -:

4. :- material to make even a preliminary enquiry in the matter. The legality and propriety of the said order are under challenge in this revision petition.

4. Heard the learned counsel for the revision petitioner. The learned counsel for the revision petitioner advanced arguments assailing the findings of the court below. According to the learned counsel, the allegation in the complaint discloses the criminal misconduct done by accused Nos.2, 3 and 4 in connivance with the 1st respondent. But, the court below miserably failed to appreciate the allegation in its correct perspective and erroneously arrived at a conclusion that no prima facie case has been made out.

5. The short question that arises for consideration in this revision petition is, whether there is any illegality or impropriety in the finding that the revision petitioner has not made out a prima facie case disclosing the offences alleged against the 1st respondent in the complaint. Crl.R.P. No. 791 of 2015 -:

5. :- 6. Going by the impugned order, it is seen that the relationship between the petitioner and the 1st respondent is not disputed. It is also not disputed that the 1st respondent was given 'D' schedule property and the 'D; scheduled fifth item is 46

cents of paddy land and a pond situated on the south-eastern side of 96 cents of land in Sy.No.551/2, surrounded by properties in Sy.No.549/8-9 on the east, 551/1 on the south, 550/6 on the west and 551/5-6 on the north. The specific case of the petitioner in the complaint is that the father had died intestate in respect of the remaining 50 cents of property and under settlement deed No. 3280/89, the 1st respondent created a document in favour of his son, the 7th respondent, taking the remaining 50 cents also for which he had no manner of right. According to the petitioner, in committing the offence, he entered into a criminal conspiracy with other respondents. It is seen that the court below has meticulously examined the documents produced by the petitioner and the Crl.R.P. No. 791 of 2015 -:

6. :- judgments passed in O.S.Nos.109/97 and 45/12. After examining the said documents, the court below observed that it is not known whether the father Sulaiman had absolute right over the disputed 50 cents of land, though description in settlement deed No.976/66 indicates that, 46 cents formed part of 96 cents. Secondly it was found that O.S.No.109/97 which is a suit for partition moved jointly by the three sisters against their brothers and other legal representatives was decreed on the basis of a compromise. It is significant to note that the allegation raised by the petitioner in the present complaint was not raised in the suit for partition or in the compromise. It is also observed that a contention which the petitioner did not have on 25/7/2000, on the date of compromise, has been raised through a complaint before the Vigilance Court, after a long lapse of 15 years. Thirdly, nothing is stated in document No.3280/89 produced by the complainant about the said 50 cents of property. As rightly Crl.R.P. No. 791 of 2015 -:

7. :- observed by the court below, even if there is any grievance for the complainant, such dispute is only a civil dispute that can be agitated before a civil court. No element constituting a dishonest intention or criminal misconduct has been brought out even if facts are admitted. In this analysis, the court below is justified in dismissing the complaint. There is no illegality or impropriety in the impugned order under challenge. Hence this revision petition will stand dismissed.
Sd/- (K. HARILAL, JUDGE) Nan/ //true copy// P.S. to Judge