

**State of Kerala Vs. Devassy**

**State of Kerala Vs. Devassy**

**SooperKanoon Citation :** [sooperkanoon.com/720352](http://sooperkanoon.com/720352)

**Court :** Kerala

**Decided On :** Aug-05-1957

**Reported in :** AIR1958Ker194; 1958CriLJ895

**Judge :** K. Sankaran and; P.T. Raman Nayar, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 155(2) and 537

**Appeal No. :** Criminal Appeal No. 66 of 1957

**Appellant :** State of Kerala

**Respondent :** Devassy

**Advocate for Def. :** M. Bhaskara Menon, Adv.

**Advocate for Pet/Ap. :** M.U. Issac, Public Prosecutor

**Disposition :** Appeal dismissed

**Judgement :**

**P.T. Raman Nayar, J.**

1. The State appeals against the acquittal of the accused by the Sessions judge of Trichur on appeal from his conviction by the First Class Magistrate, Chalakudy, This Court has also taken up the matter, suo motu in revision.

2. On the whole we are not satisfied that there are any grounds for interference. The offences alleged against the accused were all non-cognizable. This, notwithstanding, there was a police investigation without the orders of a Magistrate, in violation of the express prohibition in Section 155(2) of the Criminal Procedure Code, and the learned Magistrate took cognizance of the case on a police report. The learned Sessions Judge following the principles laid down in *H. N. Rishbud v. State of Delhi*, (S) AIR 1955 SC 196 (A) which was a case of an investigation in violation of the provisions of the Prevention of Corruption Act (2 of 1947), held that the illegality of the investigation did not vitiate the trial unless miscarriage of justice had been caused thereby. He then proceeded to find that there was such miscarriage in this case and, as a consequence thereof, to acquit the accused.

3. We are not disposed to disagree. It is the finding of both the lower courts, based upon evidence, that P. W. 9, the Sub-Inspector of Police, who investigated and charged this case was on bad terms with the accused, the latter having sent up complaints against him, and the correctness of this finding is not disputed by the learned Public Prosecutor. The offences are alleged to have been committed at about noon on 28-2-1954, and with a zeal and expedition which we would be glad to see him display in the discharge of his legitimate duties, P. W. 9 registered a case under Sections 323, 352 and 506 (2nd part) of the Indian Penal Code on the complaint Ext. A presented to him and, although the offences were non-cognizable, took up the investigation, arrested the accused, and put him in the lock-up within an hour of the alleged occurrence.

And, we are told, despite the fact that the offences were all bailable, offences kept the accused in the lock-up until about 8 P. M. when he was released on the orders of the Magistrate. In the circumstances it is difficult to believe that P. W. 9 was acting under some bona fide mistake in undertaking and prosecuting the investigation. It is easy enough for a Sub-Inspector of Police, if he is so minded, to secure false evidence especially in a comparatively petty case like the present and that P. W. 9 might have been so minded is an inference which legitimately arises from his conduct. In our view, the learned Sessions Judge was quite right in holding that the evidence procured as a result of such an investigation must be

viewed with the greatest degree of suspicion.

4. We are not satisfied that the evidence actually adduced is of such an unimpeachable character as to overcome this suspicion and compel acceptance. For example, one of the eye-witnesses put forward, viz., P. W. 3, was a woman who, P. W. 12 was not prepared to deny, was employed as a sweeper in the police station. Another witness, P, W. 7, who was also put forward as an eye-witness, was treated as hostile; and his evidence read with that of P. W. 8 would go to show that there was only an ordinary tussle between the accused & the complainant, P. W. 1 and, as the learned Sessions judge has demonstrated, advantage was taken of a fall from a tree which P. W. 1 had earlier had, and as a result of which he suffered some injuries, to make the accused responsible for all the 15 injuries (all petty injuries) which the doctor, P. W. 4, was able to discover on the person of P. W. 1. The evidence of the doctor is that all the injuries could have been caused by a fall from a tree.

5. We might also observe that even according to the prosecution, the incident took place in the court yard of the accused's house. It is the accused's case that the complainant, P. W. 1, went there and made trouble, whereupon he was asked to get out, and that the witnesses have given false evidence for fear of the Police.

6. We dismiss the appeal.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**