

**M. Narayanan and anr. Vs. Chellan Kunhambu and anr.**

**M. Narayanan and anr. Vs. Chellan Kunhambu and anr.**

**SooperKanoon Citation :** [sooperkanoon.com/727479](http://sooperkanoon.com/727479)

**Court :** Kerala

**Decided On :** Jul-01-1987

**Reported in :** 1988CriLJ1375

**Judge :** Chettur Sankaran Nair, J.

**Appellant :** M. Narayanan and anr.

**Respondent :** Chellan Kunhambu and anr.

**Judgement :**

ORDER

**Chettur Sankaran Nair, J.**

1. The prayer in this petition is to set aside the order of acquittal in C. C. 230/81 on the file of Judicial Magistrate of Second Class, Payyannur. On a complaint by the petitioners, the first respondent was charge sheeted for an offence under Section 51(A) of the Kerala Police Act. The grievance made is that after examining two out of six witnesses cited, and without making an attempt to procure attendance of the other witnesses, the accused was acquitted. This, the petitioners would say, has resulted in a miscarriage of justice.

2. To ascertain the correctness of the allegation, a report was called from the Magistrate. The report dated 12-6-87 shows that on 16-7-83, 26-7-83 and 16-8-83, the Court ordered summons to all witnesses and that summons was seen to have

been issued only on 26-7-83 and 16-8-83. That too, was only to C.Ws. 1 and 2 though the order directed issue of summons to all witnesses. Served copies of summons are not seen in the records, and there is no entry for issue of summons, according to the report. The Magistrate states, that summons, 'if any issued' were not seen among the records. The diary extract for 16-7-83, 26-7-83, 16-8-83, 29-8-83, 30-8-83 reads as under:

16-7-83 -.....Issue summons to all witnesses to 26-7-83.

26-7-83 -.....P.Ws. 1 and 2 examined...Issue summons to all other witnesses to 16-8-83.

16-8-83 -.....No witness. Repeat summons to all other witnesses to 29-8-83.

29-8-83 -.....Accused present. No witness. For perusal to 30-8-83.

30-8-83 -.....Accused present. I find the accused not guilty and acquit him.

3. A reading of the diary, makes sad comment on the manner in which the Magistrate discharged his responsibilities. Though there was a direction to issue summons, the Magistrate did not ascertain if summons was actually issued and what happened if it was issued. Nor did he consider whether further steps were called for to secure presence of witnesses. At the end of the month, proceedings were completed with undue haste and an order of acquittal followed.

4. The basic duty of the Court is to render justice to suitors before it. To this end, it must exercise the powers enuring to it, and exercise such powers it must, with awareness of the role of the Court, in the criminal justicing system. I regret to say, this obligation was not fulfilled by the Court below. The Court did not make a genuine effort to secure presence of witnesses. It did not advert to the reasons for absence of witnesses. Nor did it consider, whether coercive steps were called for. What resulted was miscarriage of justice.

5. The responsibility of Courts in like situations, was highlighted by this Court, time and time again, in State v. John Abraham 1959 Ker LT 840 : 1961(2) Cri LJ 92(1), State v. Aboobacker 1960 Ker LT 1142 : 1961(2) Cri LJ 92(2), Sadasivan v.

Rajagopalan 1970 Ker LT 399 : 1971 Cri LJ 159, Radhamany Amma v. Kunju Pillai 1980 Ker LT 393 : 1981 Cri LJ 247, Abdulla v. State ILR (1981) 1 Ker 508 : 1981 Cri LJ NOC 55, State of Kerala v. Abdulla 1984 Ker LT 452 and Balakrishnan Panicker v. Thevan (1987) 1 Ker LT 628. Decisions consistently counselled the role of the Court in securing attendance of witnesses. After a survey of the relevant provisions of law and the precedents, in Abdulla's case, 1984 Ker LT 452 Bhat, J. stated the position clearly thus:

But, there may be cases where summons is not served or in spite of service of summons the witnesses may not attend Court. Where the circumstances require and in appropriate cases, the criminal Court may have to pursue the matter and take coercive steps by issuing warrant of arrest. In the criminal judicial process, the prosecution must be enabled to produce all the necessary evidence before Court, so also the defence.

In this state of law, the Court below could not have been in any doubt as to what it should have done. Unfortunately, the Court did not do what it was required to do.

6. The criminal Court or for that matter any Court, holds the scales of justice even and dispassionately. But, its role is not passive. Impartiality is not indifference. Court has a positive role in the criminal justicing system. It must live up to its responsibilities. Unmerited acquittals, lead to miscarriage of justice, as much unmerited convictions. In *Stirland v. D.P.P.* (1944) 2 All ER 13 with clarity of thought and felicity of expression, Viscount Simon stated:

A miscarriage of justice may arise from the acquittal of guilty, no less than by the conviction of the innocent

Jerome Hall (Studies in Jurisprudence and Criminal Theory) said:

Security of person and property of all citizens, is an essential requisite of good Government and this can be ensured through the instrumentality of criminal law alone.

Criminal law is an instrument of social control and it is aimed to regulate behaviour. If the agency charged with the administration of criminal justice, fails to

live up to its trust; it can lead to chaos and results which criminal law so sedulously seeks to prevent. The resultant situation, was envisioned by Butler, J. of the U. S. Supreme Court in *Nice v. Minnesota* (283 US 697) (sic):

Society would not long endure such threats, that if Courts did not protect them, the injured parties would be obliged to resort to private vengeance to protect themselves.

7. The facts noticed earlier show that the Court below failed in its plain duty. The result was miscarriage of justice. Interference is called for.

8. Counsel for first respondent Sri E.V. Nayanar submitted that retrial at this distance of time would cause prejudice to the accused. Relying on decisions of this Court, he submitted that the allegations made, do not spell out the offence under Section 51(A) of the Police Act. It will be open to the accused to raise this defence. At this stage, without all the evidence coming on record, it is not possible to say whether the offence will be made out or not.

In the result, the order of acquittal is set aside and the case is remitted to the trial Court. The Court below will proceed in the matter in accordance with law and in the light of the observations made herein above. Send down the records immediately.

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