

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

WEDNESDAY, THE 18TH DAY OF DECEMBER 2013/27TH AGRAHAYANA, 1935

CRL.A.No. 164 of 2002 ( )  
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AGAINST THE JUDGMENT IN C.C.NO.971/99 of THE COURT OF JFCM,  
KUNNAMKULAM, DATED 25.4.2002

APPELLANT(S)/COMPLAINANT:  
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AVARUTTI HAJI,  
S/O.MUSLIM VEETIL KOYAKUTTY,  
ERANELLUR VILLAGE,  
KECHERI DESOM,  
THALAPPILLY TALUK.

BY ADVS.SRI.RAJESH RAJAGOPAL  
SRI.MANOJ RAJAGOPAL

RESPONDENT(S)ACCUSED NOS.1, 2 AND 4 AND STATE:  
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- 1.THANKA, W/O.PANIKKAPARAMBIL KUMARAN,  
RESIDING AT ERANELLUR VILLAGE,  
THALAPPILLY TALUK.
- 2.PRASAD, S/O.PANIKKAPARAMBIL KUMARAN,  
RESIDING AT ERANELLUR VILLAGE,  
THALAPPILLY TALUK.
- 3.KUMARAN, S/O.ERINJAYIL VEETIL PANJAN,  
CHOONDAL VILLAGE, THALAPPILLY TALUK.
- 4.STATE OF KERALA, REPRESENTED BY  
PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERANAKULAM.

BY ADV.SRI.N.SURESH, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON  
18-12-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ami/

**V.K.MOHANAN, J.**

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**Crl.A.No.164 of 2002**  
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**Dated this the 18<sup>th</sup> day of December, 2013.**

**J U D G M E N T**

The complainant in a private complaint, who initiated prosecution for the offence punishable under sections 447, 427 r/w 34 of IPC, is the appellant, as he is aggrieved by the judgment dated 25.4.2002 in C.C.No.971/99 of the court of Judicial First Class Magistrate-Kunnamkulam, by which the learned Magistrate acquitted the accused 5 in numbers under section 255(1) of Cr.P.C. who faced the prosecution for the said offences.

2. The case of the complainant is that he is in absolute possession and enjoyment of the properties lying in survey No.602 of Eranellur Village, wherein he had planted coconuts and arecanuts. According to the complainant, the 1<sup>st</sup> accused has got a property lying on the

southern side of the complainant's property. While so, the first accused, who is a lady, tried to take vehicles to her house through the property of the complainant and when the complainant obstructed the same, she preferred O.S.No.606/93 before the Sub court, Thrissur, against the complainant. It is the further case of the complainant that on 12.5.1993, he had installed a gate on the eastern corner of his property, but all the accused, on 10.12.1997 had trespassed into his property and destroyed the concrete fencing and gate and also destroyed valuable trees and thereby caused damage to the tune of ₹1 lakh and thus according to the complainant, the accused 5 in numbers have committed the offences punishable under sections 447, 427 r/w 34 of IPC.

3. On filing the complaint, the same was taken on file in due compliance with the procedure and thus instituted C.C.No.971/99 and during the trial of the case, Pws.1 to 3 were examined and Exts.P1 to P7 were marked from the side of the complainant. From the side of the accused,

DW1 was examined. Finally, the trial court on the basis of the available evidence and materials found that the complainant has miserably failed to prove that the entire property is in his possession and also found that the accused was challenging the possession of the complainant in the property in question right from 1993. Consequently found that the allegation of Pws.2 and 3 that the accused trespassed to the property of PW1 and destroyed the coconut trees and arecanut saplings cannot be believed for a moment. Consequently, the accused are acquitted. It is the above finding and order of acquittal challenged in this appeal.

4. I have heard Adv.Sri.P.Vijaya Bhanu, the learned counsel for the appellant. Though notice was ordered and served to the respondents, nobody has turned up and no argument is advanced resisting the above appeal.

5. Learned counsel for the appellant submitted that civil cases are pending before the court with respect to the right over the property in question and according to the

complainant, he was in possession of the property which is proved through the documents like Exts.P1 to P6. Therefore, according to the learned counsel, the findings of the court below are incorrect and illegal and the consequent acquittal of the accused is liable to be interfered with.

6. I am unable to sustain the above contention. In order to attract the offence under section 447 of IPC, it is the unshifted burden and duty of the complainant to plea and prove that the property in question was exclusively belonged to the complainant and the same was within his exclusive possession and enjoyment. But in the present case, as rightly held by the learned Magistrate, no scrap of paper is produced by the complainant to show that the property in question was owned by him and that it was within the exclusive enjoyment and possession of the accused. Even according to the complainant, the accused initiated civil proceedings against the complainant, when the complainant objected the taking of vehicle by the

accused through the property in question. That fact itself shows that the complainant was not having absolute ownership or enjoyment over the property or possession over the same. As rightly found by the learned Magistrate, Exts.P1 to P6 shows that the accused is challenging the claim of the complainant right from 1993 and serious civil cases are pending between them. So, without earmarking the property and showing the same is within the absolute ownership and possession of the appellant, it cannot be said that the complainant has succeeded in making out a case under section 447 of IPC against the accused. If the above case of the complainant found as false and wrong, there is no question of considering Section 427 of IPC against the accused that they had destroyed the coconut trees and arecanut saplings, particularly when the right over such property is under dispute and while series of civil cases are pending.

7. From the above facts and circumstances involved in the case and in view of the evidence and materials on

record supporting the above finding and for the above reason it cannot be said that the findings of the court below are perverse or illegal. As the appellant has miserably failed to convince this Court that the findings of the court below are perverse or illegal, this court will not be justified in interfering with the order of acquittal recorded by the trial court in favour of the accused and thereby to disturb the presumption of innocence reinforced in favour of the accused by the impugned judgment.

In the result, there is no merit in this appeal and accordingly the same is dismissed.

Sd/-  
**V.K.MOHANAN,**  
**Judge**

ami/

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P.A. to Judge