

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 23RD MAY 2005 / 2ND JYAISHTA 1927

Crl.Rev.Pet.No. 119 of 1996()

-----  
CC.200/1992 of CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM  
.....

REVN. PETITIONER/COMPLAINANT:

-----  
K.RAJAN,  
(DHANYA SAW MILLS, MALAYADI)  
CHERUPPALIMONPURATHU VEEDU,  
VINOBA NIKETHAN P.O.,  
ARYANADU, THOLIKKODU VILLAGE,  
NEDUMANGAD.

BY ADV. SRI.S.GOPAKUMARAN NAIR

RESPONDENTS:

- 
1. SUNDARAM PILLAI,  
C/O.MADHAVAN PILLAI,  
TRANSWORLD CREDIT & INVESTMENT COMPANY (P.LTD.)  
PREMIER HOUSE, BEACH ROAD,  
KOLLAM.
  2. STATE, REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI K.B.SURESH

R2 BY PUBLIC PROSECUTOR (SRI. THAVAMONY)

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD  
ON 23/05/2005, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

**K. HEMA, J.**

-----  
Crl.R.P. No.119 of 1996  
-----

Dated this the 23<sup>rd</sup> day of May, 2005.

**ORDER**

Under what circumstances a Magistrate can invoke Section 245(1) Cr.P.C. to discharge an accused? What is meant by the expression that "no case against the accused has been made out which, if unrebutted, would warrant his conviction"? These are the questions to be considered in this revision.

2. The petitioner filed a complaint before the Chief Judicial Magistrate, Thiruvananthapuram alleging offences under Section 379, 506(ii), 392 and 34 of Indian Penal Code against the first respondent. The first respondent is a financier in respect of the vehicle which is involved in this case. According to prosecution, on 20.7.1990 at about 3.30 p.m. when the vehicle was parked there on the side of the road the first respondent along with five others came in a car and intimidated the driver and cleaner who were inside the vehicle and they were pulled out of the vehicle. When the petitioner-complainant asked about this act, the first respondent and five others who were armed with deadly weapons like iron rod,

dagger etc. intimidated them showing the weapons and they were told that they would be done away with in case any attempt to resist. Thereafter the accused got into the driver's seat of the vehicle and two out of the 5 persons also got into the vehicle and the vehicle was driven away. The remaining 3 accused got into the car in which they came to the spot and they also escaped from the scene.

3. The court below recorded the sworn statement of the petitioner-complainant, and took the case on file under Section 392 of the Indian Penal Code, and summons was issued to the accused. Evidence was adduced in this case. PWs 1 and 2 and Exts.P1 to P9 were marked under Section 244 of the Cr.P.C. After taking evidence referred to in Section 244 the learned Magistrate considered the evidence in detail and found that no case against the accused has been made out which if un rebutted would warrant his conviction. The accused was, therefore, discharged under Section 245(1) Cr.P.C. The said order is challenged in this revision.

4. The case of the complainant-petitioner, as disclosed from the evidence on record, in this case is that the stolen vehicle belongs to the first respondent, being on hire purchase. As per the Certificate of registration Ext.P1, the original owner of the vehicle was one Thankamma. She allegedly executed an agreement

selling vehicle in favour of the complainant-petitioner. A sale receipt was thereafter issued by the accused in favour of the complainant effecting sale of the vehicle in favour of the complainant. The said document is Ext.P8. It is further alleged that the complainant used to remit instalments after the sale of the vehicle to the first respondent-financier regularly and it was being acknowledged by first respondent also. In support of this, Ext.P7 telegram was also produced which was allegedly signed by first respondent.

5. The complainant also produced documents like permit, certificate of Insurance, extension order on payment of tax etc. The complainant-petitioner produced all documents and also oral evidence of himself as PW1. The Cleaner of the vehicle is PW2. From their evidence, it can be presumed that petitioner was in possession of the vehicle. All the documents relating to the vehicle were in possession of petitioner and also the document which is purported to have been sent by first respondent will indicate that the transactions were with the knowledge of first respondent. The court below found that such evidence was sufficient to frame a charge.

6. According to the learned counsel appearing for petitioner such finding of learned Magistrate is totally illegal and against the well-established principles of law as held by various Courts

including the Supreme Court. It is also pointed out that the court below has gone into meticulous evaluation of the evidence of PWs 1 and 2 and even tested the credibility of such evidence and that of the documentary evidence for arriving at a conclusion that the accused has to be discharged. The court below also found that Ext.P8 is a fabricated document which will not bind the accused and that no reliance can be placed on Ext.P9. According to the court below, it appears that the complainant wanted to get possession of the vehicle in respect of which there exists an agreement (Ext.P9) between the complainant and Thankamma. It was held that the complainant has no legal right to get possession of the vehicle. The court below also found that PW1 is an interested witness, being the complainant. PW2 is also an interested witness being the Cleaner of the vehicle and servant of PW1. That is why court did not place in reliance upon their evidence.

7. On going through the order under challenge, I find that the approach made by the court below is totally illegal. A meticulous examination and analysis of evidence, a deep search into the facts, the reliability of the documentary evidence and also the oral evidence are not warranted at the stage of consideration of a case under Section 245(1) Cr.P.C. The court has to look into the

evidence placed before it as it is, and to find out whether the evidence adduced was sufficient to presume whether an offence is committed by the accused or not. The satisfaction to be arrived at is only prima facie one and that too, a presumption that the accused committed an offence.

8. The court has to accept the evidence as such, unless the evidence is inherently improbable and on the face of record, it is absolutely false. But such a conclusion cannot be arrived at in this case. The oral evidence is supported by documentary evidence and there are sufficient materials to presume that an offence is made out. The evaluation and assessment of the worth of the documentary evidence as well as oral evidence to discharge the accused was totally unwarranted and not permitted under Section 245(1) Cr.P.C. The only question to be looked into by the court at the stage under Section 245(1) Cr.P.C. is whether all the evidence placed before it would lead a presumption whether the accused committed an offence or not.

9. Before an accused is discharged the court must come to a conclusion that no case is made out against the accused if unrebutted would warrant a conviction. What the court has to ascertain at this stage will be whether the evidence on record when rebutted would be

sufficient to warrant a conviction. The court is not expected to scrutinise evidence for the purpose of finding out whether the evidence is reliable or not. The question whether the evidence is relevant or not arises only at the stage of rebutting the evidence and that stage had not come.

In the above circumstances, I find that this is a fit case to interfere and hence the order under challenge is set aside. The matter is remanded to lower court for fresh consideration and disposal. The court below will re-consider the question afresh on the basis of the materials placed before it and in accordance with law.

Petition is allowed.

Sd/-

K. HEMA, JUDGE.

Krs.

K. HEMA, J.

Crl.R.P.119/96

ORDER

23.5.2005