

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 13TH FEBRUARY 2006 / 24TH MAGHA, 1927

Crl.Rev.Pet.No. 168 of 1997

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CRA.14/1994 of ADDL.SESIONS COURT, NORTH PARAVUR  
ST.859/1990 of JUDL.MAGISTRATE OF FIRST CLASS, PERUMBAVOOR  
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REVN. PETITIONER/APPELLANT/ACCUSED

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SUNNY, SON OF VARGHESE,  
CHULLY HOUSE, OKKAL KARA,  
CHELAMATTOM VILLAGE (OKKAL P.O.)

BY ADV. SRI.BABU KARUKAPADATH

RESPONDENTS/COMPLAINANTS:

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EXECUTIVE OFFICER, KANJOOR PANCHAYAT  
KANJOOR P.O., ERNAKULAM.

STATE OF KERALA, REP. BY  
PUBLIC PROSECUTOR .

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)  
SRI.GEORGE VARGHESE KIZHAKKAMBALAM  
PUBLIC PROSECUTOR SRI. K.J. GEORGE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD  
ON 13/02/2006, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

**J.M.JAMES, J.**

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**CRL.R.P.168/1997**  
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**DATED THIS THE 13TH DAY OF FEBRUARY, 2006**

**O R D E R**

The first respondent, the Executive Officer of Kanjoor Panchayat, had preferred a complaint as S.T.No.859/1990 on the file of the Judicial Magistrate of First Class, Perumbavoor, against the revision petitioner, accused, under section 74 of the Kerala Panchayat Raj Act, in short 'the Act', r/w rule 26 of the Kerala Panchayat (Taxation and Appeal) Rules, 1963, in short 'the Rules'. The trial Court, after appreciating the evidence, which consist of four witnesses and nine documents on the part of the complainant and two witnesses on the part of the revision petitioner, together with Ext.C1, the expert opinion, as well as Ext.C2, the specimen signature of the accused, found the accused guilty under Section 74 of the Act r/w rule 26 of the Rules and, therefore, sentenced him to pay a fine of Rs.2,500/-, in default to undergo simple imprisonment for six months. It is also however, directed to pay an amount of Rs.39,206/- to the complainant, Panchayat.

2. Though it was challenged before the Additional Sessions Court, North Paravur, through criminal appeal

No.14/1994, it was dismissed. Hence this revision.

3. I have perused the judgments of both the Courts below. The revision petitioner was the bidder for the collection of the sand for the financial year commencing from 1.4.1989 and ending on 31.3.1990. The auction was confirmed with the name of the revision petitioner for an amount of Rs.73,070/-, as seen from Ext.P2, the minutes of the auction, as well as the signature of the revision petitioner therein. The auction was approved by the committee of the Panchayat through its resolution, dated 13.3.1989 as seen from Ext.P3. Ext.P4 notice was sent directing the revision petitioner to execute necessary agreements and to produce the solvency as and when demanded. The revision petitioner paid Rs.36,000/- on 10.3.1989, which is being the half of the bid amount, and thereafter, executed Ext.P5 agreement in favour of the Panchayat, agreeing to pay the balance bid amount of Rs.73,070/- in two equal instalments namely the first instalment on 30.6.1989 and the second instalment on 30.9.1989 in default of which to pay the interest at the rate of 12.5% per annum for defaulted amount, it is submitted that the revision petitioner failed to pay the second instalment and thereafter the first respondent, Panchayat proceeded against the revision petitioner as per the provisions of law. Ext.P6 is the notice demanding due

balance amount. But the said amount was not paid though Ext.P7 notice was again sent. However, it was returned unserved as seen from Ext.P7 and Ext.P7(a). Therefore, Ext.P8 revenue recovery notice was initiated. Ext.P8 is another notice which was served on the brother of the appellant. Ext.P9 is the Distress warrant which could not be executed as the revision petitioner was not residing within the limits of the first respondent, Panchayat.

4. The execution of Ext.P5 is admitted by the revision petitioner. However, his contention is that the Panchayat did not fulfill the conditions contained in Ext.P1 notice. It was argued before the Courts below that in case of any default of payment of bond amount or instalement amount, the Panchayat would have the right to re-auction the collection of sand. In the absence of re-auction, in the case of the revision petitioner, the Panchayat cannot claim any amount from the revision petitioner. Interpreting Section 74 together with the legal principle contained in **Suresh v. Executive Officer (1995 (2) KLT 75)**, the appellate Court had come to the conclusion that Section 74 of the Act is a special provision where the Panchayat can recover the tax due to pay as per Section 26 of the rules. This provisions are included to enable the Panchayat from being driven to the

contingency of filing the suit to recover the amount due from the defaulted persons. An argument had been raised that he did not collect the sand for the entire period of financial year, and therefore, he was not liable to pay the balance amount to the Panchayat. Such a fact had not been established and the revision petitioner cannot take such a stand after having defaulted the payment of the installment amount in the light of Ext.P5 agreement. The evidence of PW3 also clearly show that the revision petitioner was not residing within the local limits of the respondent, Panchayat. On going through the material available on record it is seen that the first respondent, Panchayat had proceeded after complying with all requirements, under Section 74 of the Act and rule 26 of the Rules. Therefore, I find that both the trial court as well as the appellate court had fully appreciated the facts and law and there is no scope to interfere with the same through this revision.

Hence this revision fails. It is accordingly dismissed.

**J.M. JAMES ,  
JUDGE**

mrCS