

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

TUESDAY, THE 28TH DAY OF FEBRUARY 2017/9TH PHALGUNA, 1938

Cr1.Rev.Pet.No. 559 of 2013 ()

AGAINST THE ORDER IN CMP 1731/2012 of J.M.F.C.-II, MANANTHAVADY
DATED 06-10-2012

REVISION PETITIONER/COMPLAINANT:-:

KELOTH ABDU RAHMAN,
S/O ERAMULLAM KUTTY, AGED 64 YEARS, NO OCCUPATION,
KATTIKKULAM POST, THRISSILERY VILLAGE, MANANTHAVADY TALUK, WAYANAD
DISRICT, PRESENTLY RESIDING AT KELOTH HOUSE, MADHUMMAL PEEDIKA,
KOTTOOR, P.O. KADCHIRA, PIN:670 621, KANNUR DISTRICT.

BY ADV. SRI.R.SURENDRAN

RESPONDENTS/ACCUSED AND STATE:-:

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1. E.K. MOIDU
S/O AHAMMED HAJI, AGED 48 YEARS, ELAMBILATTU KUTTIYALI
PURATHU HOUSE, VELLANCHERY, KATTIKKULAM POST, MANANTHAVADY TALUK,
WAYANAD DISTRICT, PIN:670 645.
 2. ABDUL LATHEEF,
S/O AHAMMED HAJI, AGED 60 YEARS, ELAMBILATTU KUTTIYALI
PURATHU HOUSE, VELLANCHERY, KATTIKKULAM POST, MANANTHAVADY TALUK,
WAYANAD DISTRICT, PIN:670 645.
 3. T.P.SATHYAN, AGED 45 YEARS
ACHU NIVAS, PANAMARAM POST, MANANTHAVADY TALUK, PIN:670
721.
 4. SULAIMAN, AGED 35 YEARS
SUPERVISOR, VELLANCHERY ESTATE, KATTIKKULAM POST,
MANANTHAVADY, PIN:670 645.
 5. SHAFEER,
S/O UMMER, AGED 35 YEARS, DRIVER, KATTIKULAM POST,
MANANTHAVADY, PIN:670 645.

6. JABID,
S/O ABDULLA, AGED 35 YEARS, ELAMBILATTU KUTTIYALI
PURATHU HOUSE, VELLANCHERY, KATTIKKULAM POST, MANANTHAVADY TALUK,
WAYANAD DISTRICT, PIN:670 645.

7. THOMAS P.P., AGED 35 YEARS
P.P. TRADERS, POOVATHINGAL HOUSE, KATTIKKULAM POST,
MANANTHAVADY, PIN:670 645.

8. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN:682 031.

R3 BY ADV. SRI.K.R.ARUN
R1,R2 BY ADV. SRI.MATHEW KURIAKOSE
BY PUBLIC PROSECUTOR SRI.UDAYAKUMAR K.B.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 28-02-2017, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P.JYOTHINDRANATH, J.

Crl.R.P.No.559 OF 2013

Dated this the 28th day of February, 2017

ORDER

This criminal revision petition is filed against the order of the Judicial First Class Magistrate Court II, Mananthavady in C.M.P.No.1731/2012 dated 6.10.2012 by which a complaint was dismissed under Section 203 of Cr.P.C. The facts necessary for consideration of this revision petition is that a private complaint was filed by the revision petitioner herein as C.M.P.No.1731/2012 before the court alleging an offence under Section 457, 380, 506(ii) r/w 34 of IPC. It is submitted before me that the petitioner herein is conducting a business in fancy goods and other items in a leased shop room bearing No.TPIX/711 situated at Katikulam. It is the submission that there was some dispute in between the landlord and the petitioner herein. The first accused shown in the complaint started to pressurize the petitioner herein to evict him from the concerned shop. It is the

case of the petitioner that the dispute was settled on 6.4.2012 in the presence of Deputy Superintendent of Police, Mananthavady. Thereafter on 11.4.2012 the accused at about 8.30 p.m. forcibly opened the shop belonging to the petitioner and committed theft of readymade articles, fancy goods, television, iron box, mixer etc. and when the petitioner questioned the same, he was threatened by the accused using a sword stick and thereby committed the offences under Section 457, 380, 506(ii) r/w 34 of IPC. A complaint was filed before the court under Section 190 of Cr.P.C.. An enquiry was conducted. Thereafter, the complaint was dismissed under Section 203 of Cr.P.C. Aggrieved by the said dismissal order, this revision petition is filed before this court.

2. When the revision petition came up for hearing, the learned counsel for the petitioner submitted that the reason shown for dismissal of the complaint is not legally sustainable. It is the submission that the main reason shown by the court is that the first respondent who is the accused in the complaint filed a suit for injunction against the complainant as O.S.No.74/2012 and further the complainant filed

O.S.No.98/2012 against the first respondent who was the first accused in the above complaint i.e. there are civil suits in between the petitioner herein as well as the accused parties and the court also considered the allegation in the complaint and the sworn statement and thereafter dismissed the complaint. Only because there is civil dispute, the accused cannot be absolved from criminal prosecution.

3. The learned counsel appearing for the first and second respondents Sri.Mathew Kuriakose submitted that admittedly there is civil dispute. It is also pertinent to note that the court appreciated the whole case especially the fact that the first respondent is the owner of the building and further appreciating the averments in the complaint and sworn statement.

4. Civil disputes may be therein, but a criminal offence if committed cannot be shadowed by a civil dispute i.e. when a crime is allegedly committed which has nothing to do with the property dispute, it cannot be viewed lightly. The stand of the learned counsel for the respondent is that when no illegality is committed by the trial court, exercising the revisional powers of this court is not warranted

especially in a matter like this.

After considering the totality of the case and after going through the complaint as well as the sworn statement, I feel that the complaint need not be dismissed at this stage. Hence the impugned dismissal order is hereby set aside and the matter is remanded back to the concerned court to take cognizance of any of the offence or offences that may appear to have committed. It is made clear that untrammelled by any of the observations, the Magistrate will be at liberty to take cognizance of all or any of the offence that might have been seen committed as evident from the complaint and sworn statement.

K.P.JYOTHINDRANATH
JUDGE

SV.