(2007) 02 KL CK 0053

In the High Court Of Kerala

Case No : CRL A No. 624 of 1998

The Secretary, Pramadam Grama Panchayat	APPELLANT
Vs	
Venugopala Pillai	RESPONDENT

Date of Decision : 06-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 256(1)
Kerala Panchayat Act, 1960 — Section 74
Kerala Panchayat Raj Act, 1994 — Section 210

Citation : (2007) 02 KL CK 0053

Hon'ble Judges : K. Thankappan, J

Bench : Single Bench

Advocate : V. Philip Mathew, for the Appellant;

Final Decision : Allowed

Judgement

K. Thankappan, J.—These appeals are filed against the order passed respectively in S.T. Nos. 394389,392,388,384,391 and 390/1998 on the file of the Judicial Magistrate of First Class - II, Pathanamthitta. The above cases were on private complaints filed by the same complainant namely, the Secretary of the Grama Panchayat, Pramadam in Pathanamthitta taluk. In the complaint, it is alleged that the respective respondents in the above complaints have defaulted building tax due to the complainant Panchayat. The complaints were filed u/s 74 of the Kerala Panchayat Act, 1960, corresponding to Section 210 of the amended Act namely Kerala Panchayat Raj Act, 1994. They were taken on file by the trial magistrate and notices were issued to the respondents. As per the complaints, the respondents have defaulted the taxes due to the Panchayat and warrants were issued under the provisions of the Kerala Panchayat Raj Act. However, as the respondents have not paid the arrears, prosecution has launched started by the Panchayat. On taking into cognizance of the complaints, though notices were issued to the respondents, the learned Magistrate acquitted the respondents u/s 256(1) of the Code of Criminal Procedure for the only ground of absence of the complainant namely, the Secretary of the complainant Panchayat.

2. Special leaves were granted by this Court in all these cases and the respondents were served. This Court heard the learned Counsel appearing for the appellant Panchayat in detail and also the Public Prosecutor. The counsel appearing for the Panchayat submits that the trial Magistrate committed serious error in acquitting the respondents only on the ground of absence of the complainant, the Secretary of the Grama Panchayat. The counsel also submits that as per the dictum laid down by this Court in the judgments reported in Don Bosco Vs. Partech Computers Ltd., and G.F.S. Chits and Loans (P) Ltd. Vs. V.K. Rajesh and Another, , it is the duty of the trial Magistrate to apply his judicial discretion with the required judicial caution, while dismissing the complaints or acquitting the accused. This Court further held that the courts shall also bear in mind that unmerited, thoughtless disposal gives a wrong signal to the society, staking even public confidence in the system of administration of justice.

3. A reading of the impugned orders would clearly show that the trial Magistrate had not considered any reasons for acquitting the respondents and only because of the non- appearance of the complainant, the respondents were acquitted. The trial court ought to have bear in mind that the complainant is a public servant and had filed complaints to prosecute the respondents for non-payment of the tax due to the Panchayat. The court below ought to have adjourned the case and be proceeded in accordance with law.

4. In the above circumstances, the orders under challenge are hereby set aside and the trial court is directed to take back the complaints on file and proceed with the cases as per law on issuing fresh notices to the respondents. The appellant shall appear before the court below on 08.03.2007.

Accordingly all the appeals are allowed.

