

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO. 55 OF 2004

FR. THOMAS MANIANKERIKALAM & ANR.

Appellant (s)

VERSUS

THOMAS J. PADIYATH & ANR.

Respondent(s)

(With office report)

Date: 20/04/2005 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE H.K. SEMA

For Appellant(s)

Mr. Roy Abraham, Adv.

for Mr.Himinder Lal,Adv.

For Respondent(s)

No. 1

Mr. R. Sathish ,Adv

No. 2

Mr. M.K.S. Menon, Adv.

for Mr. K.R. Sasiprabhu,Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard learned counsel for the parties.

The appeal is allowed.

[Alka Dudeja]

Court Master

[Om Prakash]

Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 55 OF 2004

Fr. Thomas Maniankerikalam and Anr.

...Appellant (s)

Versus

Thomas J. Padiyath and Anr.

...Respondent(s)

O R D E R

Heard learned counsel for the parties.

By the impugned order, the High Court refused to quash prosecution of the

appellants under Section 500 of the Indian Penal Code. The point involved in this case is

as to whether the complainant was justified in authorising Power of Attorney Holder to

file the complaint under proviso to Section 199(1) of the Code of Criminal Procedure,

1973, which lays down that where a complainant is under the age of eighteen years, or is an

idiot or a lunatic, or is from sickness or infirmity unable to make a compl

aint, or is a

woman who, according to the local customs and manners, ought not to be compelled to

appear in public, some other person may, with the leave of the Court, make a complaint on

his or her behalf. In the present case, the complainant himself did not file the complaint

because he was residing in Dubai, which was not a ground under the said proviso. As such

the complainant was not justified in authorising the Power of Attorney Holder to file the

complaint on his behalf. This being the position, we are of the view that the complaint,

having not been presented in accordance with the provisions of Section 199 (1) of the Code

of Criminal Procedure, 1973, as such prosecution of the appellants is fit to be quashed.

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Accordingly, the appeal is allowed. The prosecution of the appellants is hereby

quashed, giving liberty to the complainant to file a fresh complaint in accordance with law.

As the present complaint was being prosecuted bona fide, we direct that in calculating the

period of limitation for presenting a fresh complaint, the period from the date of filing of

the complaint till this date shall be excluded.

.....J.

(B.N. Agrawal)

.....J.

(H.K. Sema)

New Delhi,

April 20, 2005.