

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

Crl.Rev.Pet.No.331 of 2003 ()

**AGAINST THE JUDGMENT IN CRA 608/2001 of 4th ADDL.D.C.,
ERNAKULAM DATED 26-11-2002**

IN

CC 1269/1999 of ADDL.C.J.M., ERNAKULAM DATED

REVISION PETITIONER(S)/APPELLANT/ACCUSED NO.1:

**D.M.BHASKARAN, AGED 50 YEARS,
S/O.MADHAVAN, VELIPARAMBIL HOUSE
PALLURUTHY P.O. KOCHI - 682 006.**

BY ADV. SRI.T.D.ROBIN

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

**STATE, REPRESENTED BY THE INSPECTOR
OF R.P.F, COCHIN HARBOUR TERMINUS
KOCHI-3 REPRESENTED BY THE PUBLIC, PROSECUTOR
HIGH COURT OF KERALA.**

BY PUBLIC PROSECUTOR SMT. BINDU GOPINATH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 23-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VS

K.HARILAL, J

Crl.R.P.No.331 of 2010

Dated this the 23rd day of February, 2015

ORDER

The petitioner is the first accused in C.C.No.1269/99 on the file of the Additional Chief Judicial Magistrate Court, Ernakulam, as well as the appellant in Crl.Appeal.No.608/01 on the files of the IV Additional Sessions Court, Ernakulam. The petitioner and two others were prosecuted for the offence punishable under Section 3(a) of the Railway Properties (unlawful possession) Act. The prosecution case in brief is that, on 5.3.1996, at about 5.P.M., the petitioner along with other accused were found removing Metallic Coke under the possession of the Railways from the Railway Yard at the Cochin Harbour Terminus Station without any authority. The petitioner and accused numbers were forced for trial and the prosecution examined PW1 to PW4 and marked Ext.P1 to P15. MO1 to MO3 were also marked. The petitioner has not adduced any evidence in defence but, when he was questioned under 313 of the Code of Criminal Procedure,

he denied the challenge against him. After trial, the learned Magistrate found the petitioner guilty of the said offence and convicted thereunder. He was sentenced to undergo simple imprisonment for three months and to pay a fine of Rs.5,000/-, and in default to undergo simple imprisonment for a further period of one month. Aggrieved by the conviction and sentence, though the petitioner had preferred the above criminal appeal. The appellate court also after reappreciating the evidence on record, confirmed the conviction entered by the trial court but, reduced and modified the sentence to simple imprisonment for one month and to pay a fine of Rs.1,000/- and in default of payment of fine to undergo simple imprisonment for a further period of 7 days. The legality, propriety and correctness of the findings whereby, the courts below found the petitioner guilty of the said offence and imposed the sentence are under challenge in this revision petition. In this revision petition, the petitioner contended that, the courts below failed to appreciate the facts and evidence in its correct

perspective. The court below went wrong in placing actual reliance on the evidence of PW1, who is the detecting Officer to convict the accused. The courts below failed to appreciate the defence case. It is also contended that the petitioner is aged 50 years and he doesn't have any history of involvement in a criminal case. In such circumstance, the court below ought to have invoked the benevolent provisions of the Probation of Offenders Act.

2. Per contra, the learned Public Prosecutor advanced arguments to justify the findings whereby, the courts below found the petitioner guilty of the charge alleged against him and sentence thereunder. According to the Public Prosecutor, the court below rightly appreciated the facts and evidence and arrived at a just and proper conclusion. It is also submitted that, the sentence imposed on the revision petitioner is proportionate with the nature and gravity of the offence.

3. The short question that arises for consideration is, whether there is any illegality or impropriety in any of the findings whereby the trial court

found that the petitioner guilty of the offence charged against him and the appellate court confirmed the same in appeal. Going by the impugned judgment passed by the trial court, it is seen that, it is the specific case of the prosecution that the petitioner and others on 5.3.1996 at about 5.P.M was found removing of metallic coke under possession of Railway from the Railway yard at the Cochin Harbor Terminal Station, without any authority. PW1 is the Head Constable attached to the RPF, Cochin Harbor Terminal Station, who detected the offence. He has given evidence in terms with prosecution case. The evidence of PW1 gets assurance from PW2 and 3 who were examined as eye witnesses, they are also railway employees. PW2 who is the Yardmaster and PW3 is a Gang man. The evidence of PW1 is thus corroborated by the evidence of PW2 and PW3. PW4 is the Sub Inspector, before whom the accused were produced after the detection of the offence. He has given evidence in claims with Ext.P1 to P10, which were prepared contemporaneously at the time when the accused was

produced before him. The learned Sessions Judge reappreciated the evidence of PW1 to PW4 and concurrent with the findings of the trial court. I do not find any kind of perversity in the appreciation of evidence of those witnesses. The petitioner while questioned under 313 of Cr.P.C., admitted the fact of detection as urged by the prosecution. But, according to him, he is a coolie, who was engaged by a contractor, and while he was removing the coke from the Railway Yard at the instruction of the contractor to the lorry, he was caught red-handed by the Railway police alleging the offence. According to him, he is a coolie worker, who had no intention to commit theft of Railway goods. Thus going by the statement given under 313 of Cr.P.C., the petitioner himself admitted that, he removed the alleged goods from the yard. But according to him, the act committed by him doesn't constitute offence punishable under law. In view of the statement given by the petitioner, I am unable to find fault with the evidence of PW1 to PW4, for the finding that the petitioner has committed the offence and the prosecution had

succeeded in proving the charge against him. Consequently, conviction entered by the trial court and concurred by the appellate court stand confirmed. Coming to the sentence, the petitioner contended that, he is an aged man and as a coolie worker who had been engaged by a contractor for the work of loading and unloading, he had no intention to commit any offence.

4. According to the petitioner, the sentence imposed by the appellate court is disproportionate with the nature and gravity of the offence. It is true that, the prison time can be imposed to secure the interest of deterrence but, deterrence in a case like this doesn't necessarily depend upon the length of a term that the offender has spend behind the bar. At the same time, misplaced sympathy cannot have any place in criminal adjudicatory process. On a proper balancing of both views, I am of the opinion that the sentence imposed by the appellate court is a little harsh and deserves to be modified. Consequently, the sentence imposed on the revision petitioner by the appellate court will stand set

aside and the petitioner will stand sentenced as follows. The petitioner shall undergo simple imprisonment for one day till raising of the court and pay a fine of Rs.3,000/- and in default to undergo simple imprisonment for a further period of 15 days.

This revision petition is stand allowed in part accordingly.

**K.HARILAL
JUDGE**

VS