

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

Crl.Rev.Pet.No. 1344 of 2003 ()

AGAINST THE JUDGMENT IN CRL.A 135/2000 of ADDL.SESIONS COURT (ADHOC-I) ,
ALAPPUZHA DATED 10.01.2003

AGAINST THE JUDGMENT IN CC 76/1999 of J.M.F.C., RAMANKARI DATED
28.4.2000

REVISION PETITIONERS/APPELLANTS/ACCUSED 1 AND 2:

1. SASIDHARAN, S/O. PANICKER KITTU,
THEEKUTTYSERRY, WARD NO.5, MUTTAR.
2. KUNJUMON, S/O. VARGHESE, EZHUPURAYIL,
WARD NO.5, MUTTAR.

BY ADVS.SRI.V.V.RAJA
SRI.M.T.SURESHKUMAR

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALAREP.BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. RAJESH VIJAYAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
26-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl.R.P.No.1344 of 2003
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Dated this the 26th day of March, 2015.

O R D E R

Accused 1 and 2 in C.C.No.76/1999 on the file of the Judicial First Class Magistrate Court, Ramankary are the revision petitioners herein. The revision petitioners were charge sheeted by the Sub Inspector of Police, Ramankary in Crime No.82/1998 of that police station under section 323 read with section 34 of the Indian Penal Code.

2. The case of the prosecution in nutshell was that, on 20.7.1998 at 7.45 p.m in front of toddy shop No.72 of Kuttanad range situated in Ward No.6 of Muttar panchayat, while PW1 was trying to stop the first accused from selling arrack, he was beaten by the second accused by slapping on his face and kicked him and prevented him from discharging his official duty and thereby the accused have committed the offence punishable under section 332 read with section 34 of the Indian Penal Code.

3. When the revision petitioners appeared before the court below, after hearing both sides charge under section 332 read

with section 34 of the Indian Penal Code was framed and the same was read over and explained to them and they pleaded not guilty. In order to prove the case of the prosecution, Pws 1 to 10 were examined and Exts.P1 to P6 were marked on the side of the prosecution. After closure of the prosecution evidence, the revision petitioners were questioned under section 313 of the Code of Criminal Procedure and they denied all the incriminating circumstances brought against them in the prosecution evidence. They have further stated that they have not committed any offence and they have been falsely implicated in the case on account of mis identity of persons. No defence evidence was adduced on their side. After considering the evidence on record, the trial court found the revision petitioners not guilty of the offence under section 332 read with section 34 of the Indian Penal Code and acquitted them of that charge but found them guilty under section 323 read with section 34 of the Indian Penal Code being a minor offence and sentenced them to undergo simple imprisonment for two months each. Aggrieved by the same, they filed Crl.A.No.135/2000 before the Sessions Court, Alappuzha, which was made over to the Additional Sessions Court, Fast Track (Adhoc-1), Alappuzha for

disposal and the learned Additional Sessions Judge dismissed the appeal confirming the conviction and sentence passed by the court below. Aggrieved by the same, the above revision has been filed by the revision petitioners/accused 1 and 2 before the court below.

4. Heard Sri.M.T.Suresh Kumar, the learned counsel appearing for the revision petitioners and Sri. Rajesh Vijayan, the learned Public Prosecutor appearing for the State.

5. The counsel appearing for the petitioners submitted that on the basis of evidence no offence under section 323 of the Indian Penal Code is attracted and it cannot be treated as a minor offence under section 332 of the Indian Penal Code. In view of section 222(4) of the Code of Criminal Procedure since pre requisite sanction is required for initiating proceedings under section 323 of the Indian Penal Code, which is non cognizable offence, they could not have been convicted for the said offence. Further the sentence imposed is harsh.

6. On the other hand, the learned Public Prosecutor submitted that the concurrent findings of the courts below do not for call for any interference and offence under section

332 of the Indian Penal Code is a cognizable offence and merely because later minor offence was found to be committed is not a ground to acquit the accused persons.

7. The case of the prosecution as emerged from the prosecution witnesses was as follows:

On the fateful day, when PW4 - the Excise Inspector along with Pws1 to 3 were doing patrol duty, they got information that arrack is being sold from toddy shop with No.72/98-99 of Kuttanad excise range and as instructed by PW4, Pws 1 and 2 went to the shop not in uniform (mafthi) and when they went there, they saw the first accused pouring some liquid in a glass with a view to serve the same to customers and immediately PW1 caught hold of his hand and there was some scuffle between them. At that time, the second accused came there and slapped PW1 on his face and when others reached there, these two persons ran away from the place. On the basis of the statement given by PW1, PW9 registered Ext.P5 First Information Report as Crime No.82/1998 of Ramankary police station under section 332 read with section 34 of the Indian Penal Code against the present accused persons and he had conducted investigation as well. PW1 was seen by PW5, who

issued Ext.P2 wound certificate of Pws 1. Thereafter PW9 went to the place of occurrence and prepared Ext.P4 scene mahazer in the presence of witnesses and he questioned the witnesses and recorded the statement. Thereafter investigation was conducted by PW10. He gave Ext.P6 report showing the name and address of the accused persons and he completed the investigation and submitted final report.

8. On the basis of the evidence given by the prosecution witnesses, both the courts below have come to the conclusion that the prosecution has failed to prove that they were on official duty and there was no possibility for the accused to know that Pws 1 and 2 were on official duty and knowing that they have deterred them from discharging their official duty and on that ground they were acquitted of the charge under section 332 of the Indian Penal Code. It cannot be said that the finding arrived at by the courts below on the basis of evidence is wrong. But the courts below have come to the conclusion that they have committed the offence under section 323 read with section 34 of the Indian Penal Code as they have voluntarily caused hurt to Pws 1 and 2 and it is a minor offence and convicted them for the said offence. Even assuming that they

were not on official duty, beating them will amount to an offence and even if it is found that offence under section 332 of the Indian Penal Code is not committed, if ingredients are there and allegations are there to attract the minor offence causing simple hurt, there is no bar for the court to convict them for the offence under section 323 of the Indian Penal Code treating that as minor offence for using criminal force. So courts below were perfectly justified in convicting the revision petitioners for the offence under section 323 of the Indian Penal Code.

9. The other question is as to whether it is hit by section 222(4) of the Code, which reads as follows:

“Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.”

Section 222(4) of the Code says that even if it is minor offence and procedure for initiating proceedings were not complied with, then the accused cannot be convicted for such offence. In the decision reported in **State of Himachal Pradesh v. Tara Dutt and another** (AIR 2000 SC 297), the Hon'ble Supreme Court has considered the question as to whether taking

cognizance of a minor offence if it is barred by limitation will vitiate the conviction in view of section 222(4) of the Code and after relying on section 222 of the Code come to the conclusion that if major offence for which accused has been charge sheeted is not barred under section 468 of the Code as no limitation has been provided merely because subsequently the accused was convicted for a minor offence which is barred under section 468 of the Code on account of limitation is not a bar for convicting the accused for a minor offence later and that will not vitiate the prosecution. In this case also the accused was charge sheeted for a major offence and cognizable offence. But when conviction was entered, it has become non cognizable offence and under section 155 (2) of the Code for non cognizable offence, without sanction of the court investigation could not be proceeded with. But once charge sheet has been filed for a major offence and cognizable offence, merely because the court had later found the accused guilty for a lessor offence, which is non cognizable offence, it will not vitiate the trial or conviction on that ground.

10. Even going by the evidence, it is seen that when PW1 had seen the first accused pouring some liquid, immediately

he went and caught hold of his hand that was prevented by the first accused. None of the witnesses examined had a case that he had used any criminal force or assaulted him with an intention to cause simple hurt as required under section 323 of the Indian Penal Code. Without any provocation somebody's hands were caught hold of, it is only a natural consequence of resisting the same, that alone was done by the first accused. So it cannot be said that he had committed any offence. So the courts below were not justified in convicting the first accused for the offence under section 323 the Indian Penal Code with the aid of section 34 of the Indian Penal Code for the act committed by the second accused and he is entitled to get acquittal of that charge as well. So conviction entered by the courts below as against the first accused for the offence under section 323 with the aid of section 34 of the Indian Penal Code is unsustainable in law and the same is liable to be set aside and he is entitled to get acquittal of the charge levelled against him.

11. As regards the second accused is concerned, on seeing PW1 catching hold of the hands of first accused, he suddenly came and slapped PW1. None of the witnesses had caused any provocation for the second accused to interfere and beat

PW1. He is not expected to take law into his hands. So under the circumstances, the courts below were perfectly justified in convicting the second accused for the offence under section 323 of the Indian Penal Code and the concurrent findings of the courts below to that extent do not call for interference.

12. As regards the sentence is concerned, since this Court has found that the first accused had not committed any offence, the sentence imposed against him is also not sustainable in law and the same is liable to be set aside. As regards the second accused is concerned, the courts below have sentenced him to undergo simple imprisonment for two months on the ground that both the accused have prevented the officers without knowing that they were on official duty. But it may be mentioned here that there is no visible injuries noted and it was happened on account of some misunderstanding that the first accused is being attacked by some person and second accused came and beat him. So considering the circumstances, this Court feels that imprisonment is not necessary in such cases and imposing fine alone will be sufficient. So period of imprisonment of two months imposed by the court below is set aside and the second accused is sentenced to pay a fine of

₹1,000/-, in default to undergo simple imprisonment for ten days.

13. In the result, the revision is allowed in part. Order of conviction and sentence passed against the first accused by the court below and confirmed by the appellate court are set aside and he is acquitted of the charge for which he was convicted and sentenced giving him the benefit of doubt and he is set at liberty. The bail bond executed by him will stand cancelled. But the order of conviction entered by the court below and confirmed by the appellate court as against the second accused is confirmed but the sentence imposed against the second accused is set aside and the same is modified as follows:

The second revision petitioner, who is the second accused in the court below, is sentenced to pay a fine of ₹1,000/-, in default to undergo simple imprisonment for ten days.

With the modification, the revision petition is allowed in part and disposed of accordingly.

Office is directed to communicate a copy of this order to the concerned court immediately.

Sd/-

K. RAMAKRISHNAN, JUDGE.

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/true copy/ P.S to Judge

K. RAMAKRISHNAN, J.

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Crl.R.P.No.1344 of 2003

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26th day of March, 2015.

O R D E R

