

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

Crl.Rev.Pet.No. 1557 of 2003 ()

AGAINST THE JUDGMENT IN CRL.A.NO.51/2002 of SESSIONS COURT,THRISSUR

**AGAINST THE JUDGMENT IN C.C.NO.164/2000 of JUDICIAL FIRST CLASS MAGISTRATE
COURT, KUNNAMKULAM**

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**SUDHARMA,
W/O.SIVARAMAN, PALLITHARA VEETIL
PERINGAVU VILLAGE, KUNDUPARA DESOM
NEAR HOLY FAMILY SCHOOL,
THRISSUR DISTRICT.**

BY ADV. SRI.N.P.SAMUEL

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

**STATE OF KERALA,
REP.BY THE PUBLIC PROSECUTOR
HIGH COURT OF KEARLA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT.BINDU GOPINATH.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 12-08-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Bb

RAJA VIJAYARAGHAVAN V, J.

Crl.R.P.No.1557 of 2003

Dated this the 12th day of August, 2015

O R D E R

In this revision filed under section 397 read with section 401 of the Code of Criminal Procedure, the petitioner, who is the sole accused in C.C.No.164/2000 on the files of the Judicial First Class Magistrate Court, Kunnamkulam for an offence punishable under section 380 of the Indian Penal Code, challenges the conviction entered and the sentence passed against her concurrently by the courts below for the above mentioned offence.

2. The case of the prosecution is that on 03.01.2000, at 9.30 a.m., the petitioner trespassed into the "New Jas Jewellery" at Vadakkekad and demanded certain gold ornaments. When the salesman was taking those gold ornaments, the petitioner committed theft of four set of gold anklets weighing 85 gms worth Rs.32,000/-. She was thus

charged for having committed offence punishable under section 380 of the Indian Penal Code.

3. In their endeavour to prove its case, the prosecution examined PW's 1 to 9 through whom Exts. P1 to P3 were marked. Mos 1 to 4 were produced and identified. At the close of the prosecution evidence, the incriminating materials were put to the accused under section 313(1)(b) of the Code of Criminal Procedure. The accused denied the entire circumstances and maintained her innocence. According to her, one Hamsa, a partner of the jewellery shop worked along with her in the Gulf. There occurred some dispute between the petitioner and Hamsa and it was in the said circumstances that she was falsely implicated in this case. No evidence was adduced by the defence.

4. On an appreciation of the evidence let in by the prosecution, the learned magistrate came to the conclusion that the prosecution had successfully established the offence

under section 380 of the Indian Penal Code beyond any shadow of reasonable doubt. On that basis, the petitioner was found guilty under section 380 of the Indian Penal Code and she was convicted and sentenced to undergo rigorous imprisonment for 1 year. Against the above judgment, conviction and sentence, the petitioner preferred Crl.A.No.51/2002 before the Sessions Judge, Thrissur. The learned Sessions Judge, as per judgment dated 31.05.2003, confirmed the findings of the learned magistrate and the appeal was dismissed.

5. I have heard the learned counsel appearing for the petitioner as well as the learned Public Prosecutor.

6. The learned counsel appearing for the petitioner has submitted that even if the entire prosecution case was accepted in its entirety, no offence under section 380 of the Indian Penal Code is either

proved or attracted. The learned counsel further submitted that the search in the instant case was conducted in total violation of the provisions of the Code which would entitle the petitioner to an order of acquittal. It was further contented that the trial court was not justified in relying on the presumption under section 114(a) of the Indian Evidence Act in view of the fact that evidence relating to the alleged body search of the accused and the alleged recovery of the gold ornaments was throughly unreliable.

7. The learned Public Prosecutor, on the other hand, argued that the evidence of PWs 2 & 5 clearly revealed that MOs 1 to 4 are the stolen property and the evidence adduced by PWs 7 & 9 clearly established the recovery of MOs 1 to 4 from the possession of the accused. According to the learned Public Prosecutor, the presumption under section 114(a) of the Indian Evidence

Act would squarely apply and the defence has not been able to rebut the presumption. It was pointed out that the accused had gone to the jewellery as a customer and has stealthily stolen the gold ornaments. It was also submitted by the learned Public Prosecutor that the petitioner was also involved in Crime No.94/2003 under section 380 of the Indian Penal Code of Anthikkad Police Station and also Crime No.379/2004 under section 379 of the Indian Penal Code of Chavakkad Police Station. The petitioner has in fact been acquitted in those case. But the fact remains that even after getting involved in a crime in the year 2000, which is the subject matter of this criminal revision petition, the petitioner has continuously got herself involved in other similar crimes as well which reveals her predilections.

8. Even though the learned counsel appearing for the revision petitioner assailed the judgments rendered by the courts below on various grounds, I do not see

any scope for interference. The findings recorded by the courts below are on the basis of appreciation of oral and documentary evidence. Both the courts below have believed the prosecution witnesses. Sitting in this rarefied revisional jurisdiction, this Court will not be justified in interfering with the concurrent findings of fact rendered by the courts below unless there is some perversity resulting in blatantly erroneous appreciation of law. I do not find any error or impropriety in the findings recorded by the courts below.

In view of the above, the revision petition is dismissed confirming the findings of the courts below.

Sd/-

**RAJA VIJAYARAGHAVAN V,
JUDGE.**

Bb

[True copy]

P.A to Judge