

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 1917 of 2003

CRL.A. 24/1999 OF THE ADDITIONAL SESSIONS COURT,KALPETTA
CC 179/1994 of JUDICIAL MAGISTRATE OF FIRST CLASS,SULTHAN BATHERY

REVISION PETITIONER(S):

MOHANAN @ MOHANDAS,
S/O KANDAN, KIZHAKKEPUTHENPURAYIL HOUSE,
PULPALLY, SULTHAN BATHERY TALUK.

BY ADV. SRI.LALJI P.THOMAS

RESPONDENT(S):

STATE OF KERALA, REP. BY THE DIRECTOR OF-
PROSECUTION, HIGH COURT OF KERALA,
ERNAKULAM

PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
11-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

RAJA VIJAYARAGHAVAN.V. J

Crl.R.P.1917 of 2003

Dated 11th December, 2015

ORDER

- 1.The instant revision is filed by the 1st accused in C.C.No.179 of 1994 of the Judicial Magistrate of First Class Court, Sulthan Bathery.
- 2.The prosecution case is that, the petitioner herein, along with four others, committed theft of 360 Kgms of pepper belonging to PW1 from his premises at Marappanmoola in Pulpally Amsom in the intervening night on 8.6.1993 and 9.6.1993 and thereby committed the offence punishable u/s 457 and 380 r/w S.34 of the IPC.
- 3.The prosecution examined as many as five witnesses to prove the offence through whom Exts.P1 to P4 were marked. On the side of the defence, one witness was

examined as DW1 and Exts.D1 and D2 were marked. At the close of the trial, the learned Magistrate, as per judgment dated 19.5.1999, came to the conclusion that the prosecution had succeeded in bringing home the finding of guilt and the petitioner was convicted u/s 457 and 380 of the IPC and he was sentenced to undergo rigorous imprisonment for three years u/s 380 of the IPC and to undergo rigorous imprisonment for two years u/s 457 of the IPC. Accused Nos.2 and 5, who were also tried along with the petitioner, were found not guilty of the offence and they were acquitted.

4. Against the above judgment, conviction and sentence, the petitioner herein had preferred Crl.A.24 of 1989 before the Sessions Court, Kalpetta, and as per judgment dated 31.3.2003, the learned Sessions Judge on re-appreciation of the evidence, confirmed the conviction and sentence passed by the learned Magistrate and the appeal was

dismissed. It is against the aforesaid concurrent findings that the instant revision is filed.

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 the learned Magistrate as well as the learned Sessions Judge in appeal has not properly appreciated the evidence adduced and the findings entered into by the Courts below are irregular, improper and illegal and the same is liable to be interfered in revision.

7.The learned Public Prosecutor, on the other hand, submitted that the evidence let in by the prosecution through the prosecution witnesses, has brought home the guilt beyond reasonable doubt and there is absolutely no

reason to interfere with the concurrent findings passed by the Courts below.

8. I have evaluated the rival contentions and I have gone through the judgments impugned. The Courts below placed absolute reliance on the recovery effected at the instance of the petitioner from his residential home of seven sacks of pepper on 14.6.1993 . The recovery was effected in the presence of witnesses and it was unquestionably proved that the items seized were the items stolen from the premises of PW1. Both the Courts below have concurrently found that the evidence of recovery was admissible u/s 27 of the Indian Evidence Act. Both the Courts below held that there are no materials to doubt the prosecution case.

9. After having gone through the judgments rendered by the Courts below, I am also of the view that both the Courts

below have appreciated the case in its proper perspective and the findings arrived does not call for any interference.

10.At that stage, the learned counsel appearing for the petitioner submitted that the incident was of the year 1993 and the petitioner is aged 63 at present. It was further submitted that the petitioner is living as a model citizen and due to advanced age and bodily ailments it will result in grave travesty of justice if he were to be sent to prison to undergo the sentence. It was further submitted by the learned counsel for the petitioner that the daughter of the petitioner has passed her MBBS course and is aspiring to do her post graduation. On these grounds, it is submitted by the learned counsel that leniency may be shown in the matter of sentence.

11.I have evaluated the contentions raised by the learned counsel. It is seen from the judgment that the petitioner

was arrested on 14.6.1993 and he was released on bail on 26.7.1993. the petitioner has undergone sentence of more than one month at the pre trial stage.

12. On the basis of the submissions of the learned counsel, this Court had called for a report from the District Probation Officer, Wayanad, as per order dated 11.8.2015. A detailed report in Form-III was submitted in a sealed cover by the District Probation Officer, Wayanad, wherein the Officer has reported that the petitioner is presently in a good situation, both financially and socially. The petitioner, it appears, is remorseful of his bad deeds and the offences committed in the past. It is reported that the petitioner regrets the entire incident and he is desirous of living peacefully with his family and to concentrate on his child's higher study. It has further been recommended by the District Probation Officer that, considering the remorseful mind and the social status now the petitioner is

receiving from the society, the petitioner be released on probation of good conduct under the supervision of a Probation Officer under the benefit of S.4(c)(3) of the Probation of Offenders Act, 1958. The learned Public Prosecutor, on instructions, has also submitted that for the past several years, the petitioner is living a good life and that he is not involved in any offence. Most of the crimes committed by the petitioner were in the year 1980 and in respect of crime allegedly committed in the year 2007, the petitioner was acquitted of all charges by the competent Court.

13.Justice Chandrasekhara Menon, J. in **Mani And Anr. v. State Of Kerala (1983 Cri.L.J. 1262)** observed that a proper sentence is a composite of many factors including the nature of the offence, the circumstances extenuating or aggravating the offence, the prior criminal record of the offender, the background of the offender with reference to

education, home life, sobriety and social adjustment, the emotional and mental condition of the offender, the possibilities of return to normal life, the possibility of treatment and training of the offender, the possibility that this sentence may serve as a deterrent etc.

14. Further in para No.14 of the above judgment, referring to an extract of the book 'Law and Society An Introduction' by Lawrence M. Friedman, it was noted thus :

The sentencing stage should not be treated as a mere matter of formality. In the matter of sentencing a person, the courts will have to take note of the fact that human behaviour is the product of antecedent circumstances. The measures employed to treat a convicted offender should serve a therapeutic function. Such measures should be designed to effect changes in the behaviour of the convicted person, the interest of his own happiness, health and satisfaction and the interest, of social defenses. A person who is sincerely trying to rehabilitate himself ought not to be demoralised.

15. In the facts and circumstance of the case including the

nature of the offence and character of the petitioner as reported by the District Probation Officer, and the above observations, I consider it expedient to release the petitioner on probation of good conduct for a period of two years on executing a bond rather sending him to jail.

16. In the result, the Revision petition is allowed subject to the following conditions:

(a). Instead of sentencing the petitioner to undergo imprisonment as ordered by the Courts below, the petitioner is released on probation of good conduct for a period of two years from the date of execution of the bond.

(b). The petitioner shall, within two weeks from the date of receipt of this order, execute bond, as referred to in S.4 of the Probation of Offenders Act, 1958, in the trial Court, for a sum of Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of that Court undertaking to keep peace and to

be of good behaviour during the said period of two years and to receive the sentence as and when called for.

(c). The petitioner shall be under the supervision of the District Probation Officer, Wayanad, for the said period of two years. The trial Court shall issue necessary orders to the District Probation Officer, Wayanad, for that purpose.

**Sd/-
RAJA VIJAYARAGHAVAN.V.
Judge**

MrCs/11/12/2015

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P.S To Judge