

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

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

Cr1.Rev.Pet.No. 2865 of 2003 ()

AGAINST THE ORDER/JUDGMENT IN CRA 442/2002 of III RD ADDITIONAL
SESSIONS JUDGE, EKM DATED 31-07-2003

AGAINST THE ORDER/JUDGMENT IN CC 983/1997 of J.M.F.C.-II, ERNAKULAM
DATED 25-04-2001

REVISION PETITIONER(S):

SHAJI,
S/O. KAREEM, THURUTHIPARAMBU HOUSE,
THAMMANAM, POONITHURA,
ERNAKULAM.

BY ADV. SRI.K.P.MUJEEB

RESPONDENT(S):

STATE OF KERALA, REPRESENTED BY
(S.I. OF POLICE, CENTRAL POLICE STATION
IN CRIME NO.104/97) PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

PUBLIC PROSECUTOR ADV. SMT. MADHUBEN.

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

acd

P.D. RAJAN, J.

Crl.R.P.No. 2865 of 2003

Dated this the 26th day of February, 2015

ORDER

The accused in C.C.No.983/97 of the Judicial First Class Magistrate Court-II, Ernakulam is the revision petitioner, who was convicted u/s.353 and 294(b) of IPC and released u/s.4(1)(3) of the Probation of Offenders Act and directed that the accused be released on his entering into a bond for ₹10,000/ with two solvent sureties each for the like sum and also directed to appear and receive sentence as and when called upon during a period of 2 years u/s.4(1) of the Probation of Offenders Act and in the meantime to keep peace and be of good behaviour. The Probation Officer, Ernakulam City was also directed to take supervision of the accused for a period of two years. Aggrieved by that, he

preferred Crl.Appeal No.442/2002 before the Sessions Court, Ernakulam, which was dismissed. The prosecution allegation against the revision petitioner is that on 20.2.1997 at about 8.30 a.m., while he was subjected to body search in the premises of the Sub Jail for producing him before the Court, he assaulted the police officers. On the basis of the information, the Sub Inspector of Police, Central Police Station registered a Crime 104/1997 against the accused. After investigation laid charge before the trial Court.

2. To prove the allegation, the prosecution examined PWs 1 to 6 and marked Exts.P1 to P6. The incriminating circumstances brought out in evidence were denied by the revision petitioner. The trial Court after analyzing the evidence, convicted him u/s.353 and 294(b) IPC and released u/s.4(1)(3) of the Probation

of Offenders Act. Against that judgment, revision petitioner approached this Court.

3. The main contention put forward by the revision petitioner is that the Courts below did not appreciate the oral testimony of PWs 1 and 3, since they are interested witnesses. The discrepancies pointed out by the revision petitioner were not considered at the time of disposal of the above appeal. Therefore, the above illegality is to be rectified.

4. The learned Public Prosecutor appearing for the respondent submitted that there is no illegality in the findings of the trial Court and no reasons are brought out in evidence to set aside the finding and prays to dismiss the petition.

5. For the purpose of satisfying the correctness, legality and propriety of the finding of the Court below, I

have examined the records and the proceedings of the inferior criminal Courts. The revision petitioner was an under trial prisoner in the Sub Jail, Ernakulam. The oral testimony of PW1 and 3 shows that while PW1 was conducting body search of the revision petitioner, he became violent and restrained PW1 from discharging his official duty. PW3 also intervened at that time. He resisted PWs 1 and 3 and also uttered indecent words. They informed the matter to the jail authorities and as per Ext.P1 he reported to the higher authorities. PWs 2 and 4 also admitted that the revision petitioner was an under trial prisoner, but they averred that they did not see the incident. Analyzing the oral testimony of PWs 1 to 4, the trial Court was of the view that the prosecution has proved the allegation against the revision petitioner.

6. In this context, I have considered whether

there is any illegality in registering the case. PW1 gave Ext.P1 report to the higher authorities and after receiving that report, Ext.P5 crime was registered by the Central Police, Ernakulam. There was delay of 12 hours in registering Ext.P5, which was also explained by the investigating officer. The revision petitioner submitted in the trial Court that the police falsely arrested him in a case to wreck vengeance against him. Considering the submission of the revision petitioner, the trial Court considered the report of the City Probation Officer, Ernakulam with regard to character and antecedents of the revision petitioner. Moreover, the age of the revision petitioner at the time of committing offence was 30 years. It is also reported that he was a habitual offender, but at present he leads a normal life and he is obedient and trustworthy person. Considering the above facts, the trial

court directed to release the revision petitioner on conditions. The appellate Court also confirmed the findings recorded by the trial Court. I do not find any illegality in the above direction issued by the Court below.

Therefore, there is no merit in this revision petition and it is dismissed accordingly.

P.D. RAJAN, JUDGE.

acd

