

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

Crl.Rev.Pet.No. 1748 of 2006 ()

AGAINST THE JUDGMENT IN Crl.Appeal No.191/2004 of ADDL.DISTRICT &
SESSIONS COURT FAST TRACK(ADHOC)-II, KOZHIKODE DATED 10-02-2006

AGAINST THE JUDGMENT IN ST 2575/2002 of JUDICIAL MAGISTRATE OF FIRST
CLASS - II, PERAMBRA DATED 27-02-2004

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SOOPPY
S/O.MAMMAD, KELOTHMEETHAL VEEDU
CHERUVANNURE AMSOM DESOM, KOZHIKODE.

BY ADVS.SRI.M.ASOKAN
SRI.DEVAPRASANTH.P.J.

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY SHO MEPPAYUR
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

R1 BY PUBLIC PROSECUTOR SRI. N. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 05-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

'C.R.'

P.D. RAJAN, J.

Crl.R.P.No.1748 of 2006

Dated this the 5th day of October, 2015

ORDER

This revision petition is preferred against the judgment in Criminal Appeal No.191/2004 of the Additional Sessions Judge, Adhoc-II, Kozhikode. The revision petitioner was convicted in S.T.No.2575/2002 by the Judicial First Class Magistrate-II, Perambra for having committed an offence punishable u/s.225B IPC. The allegation was that on 6.4.2001 at 2 p.m., the process server of the Munsiff Court, Perambra (hereinafter referred to as the Court) arrested the revision petitioner, who is the judgment debtor in E.P.No.60/99 of the above Court, but he escaped from the lawful custody, thereby committed the offence. On the basis of the report

of PW1, the S.H.O., Meppayur registered a crime and after investigation, laid charge before Judicial First Class Magistrate -II, Perambra.

2. During trial, prosecution examined 9 witnesses and marked Exts.P1 to P4 as documentary evidence. Accused examined DW1 in support of his defence. The learned Magistrate convicted the accused u/s.225B IPC and sentenced to undergo simple imprisonment for three months u/s.225B IPC. Against that, he preferred Criminal Appeal No.191/2004 before Additional District and Sessions Court, Fast Track (Adhoc-II), Kozhikode in which the conviction was confirmed and the appeal was dismissed. Being aggrieved by that, he preferred this revision petition.

3. Heard both sides and perused the oral and documentary evidence for ascertaining any illegality and

irregularity in the finding of the courts below. It appears that both courts have considered and appreciated the evidence properly.

4. According to Section 225B, if a person escapes from the custody, in which he is lawfully arrested, it is an offence. What is clear from the Section is that, whoever in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, amounts resistance to law. A perusal of the ingredients of the Section quoted above would show that if the revision petitioner was apprehended

by PW1 and it was lawful, however it is an escape from the lawful custody.

5. The occurrence was narrated by PW1, who was the process server of Munsiff Magistrate Court, Perambra. The evidence of PW1 shows that on 6.4.2001 at 2 p.m. he approached the revision petitioner with the warrant in E.P.60/99 of the above Court. PW4, the employee of the bank identified the revision petitioner. PW1 verified the address with warrant and informed the accused about the warrant and demanded to pay the decree debt mentioned in the warrant plus 10 rupees as cost, but he did not pay the amount. In the meantime PW1 obtained the signature of the revision petitioner in the warrant and arrested him. Obeying the arrest revision petitioner accompanied PW1 upto the waiting shed near Panchayat Office, Cheruvannur, thereafter he informed

that he was not ready to accompany PW1 to the Court and ran away from there. However PW1 chased him, but he could not apprehend him. Subsequently, he filed Ext.P1 report before Court. PWs 2 and 4 supported the evidence of PW1 and they identified their signature in the arrest warrant. While appreciating the above evidence against the accused, the prime duty of the Court is to ensure that the evidence is legally admissible and the witness who speak about is credible. The question of credibility can be decided by referring his oral evidence and answers in cross examination and the impression created by that evidence.

6. It may be further elaborated on the basis of the evidence of the Junior Superintendent. The issuance of warrant has been proved by PW3, the Junior Superintendent, Munsiff-Magistrate Court, Perambra. His evidence shows that he signed in Ext.P2 warrant as

directed by the Court and the Deputy Nazir entrusted the warrant to PW1. Analysing this evidence, it is clear that Junior Superintendent signed the warrant and Deputy Nazir entrusted it to PW1. Their direct evidence is believable and accepted by both the courts. PW6 registered the above case and Ext.P4 is the FIR. PW5 attested Ext.P3 scene mahazar. PW7 conducted investigation and PW8, laid charge before Court. Even though these witnesses were cross examined by the defence counsel, no material contradictions were found in their evidence and it is believable. High Court of Madras in Mammed Beary v. State [1955 Madras 157] held as follows:

"The warrant having been duly signed on authorisation of the District Munsiff, the only other question is whether on the facts as contended by the learned Counsel for the petitioner, the offence under Section 225-B, I.P.C., has been made out or not. The facts, as already stated, are that after arrest, the petitioner refused to accompany

the process server. The process server afterwards went away to court. Whether mere refusal to accompany the process server will amount to escape or attempt to escape from lawful custody is the question-- 'Santa Singh v. Emperor' AIR 1933 Lah 128 (1) (A) is relied on by the learned counsel for the petitioner where it has been held that refusal to accompany would not amount to escape or attempt to escape. With respect to the learned Judges, I am unable to agree with their opinion giving the natural meaning to the word "escape" which means getting free, getting clear away from prison or person, the act of the petitioner would undoubtedly, in my opinion, fall within the clause "attempt to escape". His refusal to accompany him necessarily means that he will not go with him and that the process server will have to leave him and go unless force is used. It is, in my opinion, an attempt to escape within the meaning of Section 225-B. Though the charge is only for escape, I find him guilty of attempt to escape. But this alteration in the conviction does not in any way affect the conviction of the petitioner under Section 225-B, I.P.C. In the result, the petitioner will be convicted for the offence under Section 225-B not for escape, but for attempt to escape."

The warrant was read over and explained to the revision petitioner and PW1 touched the body of the accused as a part of arrest which was not disputed by him. The warrant had been duly signed on authorisation of Munsiff which was admitted by the Junior Superintendent attached to

Munsiff-Magistrate Court, Perambra, who deposed that Deputy Nazir entrusted the warrant to PW1. Both courts found that the refusal to accompany the process server amounts to an offence to escape within the meaning of S.225B.

7. When an offence is punishable with imprisonment the policy of law is that the court has given its own discretion in awarding suitable sentence. While exercising this discretion the court has to take into account several factors such as the nature of the offence, age, character of the offender, his antecedents and the circumstance under which it was committed, etc. In this case, the accused is a judgment debtor, who failed to pay the decree amount. In view of the decision in **Mammed Beary's case** (supra), I am of the view that the revision petitioner's refusal to accompany the process server

necessarily means that he will not go with PW1 and that the process server will have to leave him and go unless force is used. It is an attempt to escape by the revision petitioner within the meaning of Sec.225B.

8. The technicality of escape from lawful custody and its impact on sentence was considered by the Madras High Court in Public Prosecutor v. Nellore Audinarayana Reddi [AIR 1933 Madras 278], in which it is held that where a judgment debtor who was left in the custody of the process server on his payment of detention batta for two days did not follow the process server but made an escape though he appeared in Court in the third day, the offence was of escape from lawful custody and that the fact that there was no order in writing for detention was immaterial but the offence being only a technical one, a nominal punishment would meet the ends of justice. Considering

the facts and circumstances of the case and the character of the offender, I am of the opinion that sentence of fine is sufficient to meet the ends of justice and I modify the sentence as follows:

9. The revision petitioner is sentenced to pay a fine of ₹5,000/- for offence punishable u/s.225B IPC, in default of payment of fine, simple imprisonment for two months. He is directed to surrender in the Judicial Magistrate of First Class-II, Perambra to undergo the modified sentence, failing which, the learned Magistrate shall issue non bailable warrant forthwith against him.

The Criminal Revision Petition is partly allowed.

sd/-

P.D. RAJAN, JUDGE.

acd

True copy

PA to Judge.