

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

Crl.Rev.Pet.No. 1242 of 2009 ()

CRA 280/2006 of ADDL.SESIONS COURT (ADHOC)III, MANJERI
CC 301/2003 of J.M.F.C.-I, PERINTHALMANNA

REVISION PETITIONER(S)/APPELLANT/SECOND ACCUSED::

ABDUL RAZAK, S/O.ALAVI,
PARAPURATH (H), KOLATHUR AMSOM, AMBALAPPADI.

BY ADVS.SRI.T.K.SAIDALIKUTTY
SRI.A.A.ZIYAD RAHMAN
SMT.ANITHA M.N. (EKM)

RESPONDENT(S):

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1. THE SUB INSPECTOR OF POLICE,
PERINTALMANNA.
 2. THE STATE REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
23-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1242 of 2009

Dated this the 23rd day of November 2015

O R D E R

The second accused in C.C. No.301 of 2003 on the files of the Court of Judicial Magistrate of First Class -1, Perinthalmanna has filed this revision petition challenging the concurrent finding of conviction and sentence passed by the courts below under Section 379 read with Section 34 I.P.C.

2. Heard.

3. The prosecution allegation is that on 1.5.2003 at about 2 a.m., the revision petitioner and the other accused, in furtherance of their common intention, committed theft

of one Pioneer car stereo and one Kenwood car stereo from two cars parked in the car-porch of the house of PW1.

4. Before the trial court, PW1 to PW7 were examined and Exts.P1 to P5 were marked for the complainant. No evidence was marked for the revision petitioner.

5. PW1 is the *de-facto complainant* from whose car porch theft was committed. PW1 supported the prosecution case in its entirety. The prosecution relied on the evidence of PW7 to convict the revision petitioner, who is the 2nd accused in the crime. On the basis of the confession statement given by the first accused, PW7 got information on 13.5.2003 with regard to the involvement of the 2nd accused in the case. However, he arrested the 2nd accused only on 26.5.2003. When questioned, he had

given disclosure statement and pursuant to the said disclosure statement, a car stereo was recovered from the house of the revision petitioner. PW6 is an attester to Ext.P3 mahazar whereby the car stereo was seized.

6. The car stereo seized as per Ext.P3 mahazar was not produced before the court. PW5 was the Head Constable under PW7. PW5 stated that the recovery was effected from the house of the revision petitioner on the basis of the disclosure statement given by the first accused. PW7 admitted that no statement was recorded during the identification of the material objects by PW1 at the Police station. The material objects were also not produced before the court. Therefore, the witnesses could not be confronted with the material objects. The number of the

car stereo is also not seen mentioned in Ext.P1 F.I. Statement given by PW1. Ext.P3 recovery mahazar is also silent about the number of the car stereo seized as per the said mahazar. There is no material before the court to prove that the said car stereo was the stereo stolen from the car of the *de-facto complainant*.

7. It is borne out from the records that no arrest memo was also produced or marked to prove the arrest of the revision petitioner. This would show that the arrest of the revision petitioner was not proved by the prosecution. The details of the revision petitioner were known to PW7 as early as on 13.5.2003. Even then, the house of the revision petitioner was not searched prior to the arrest of the revision petitioner. It is very difficult to believe that even

after getting information regarding the involvement of the revision petitioner in the commission of the offence, the investigating officer did not conduct any search on the house of the revision petitioner. The evidence of PW7 would show that the car stereo was found on the T.V. stand and not concealed anywhere in the house. Having gone through the relevant inputs, I am satisfied that there is no convincing evidence to connect the revision petitioner with the commission of the offence. For the said reason, it has to be held that the appreciation of evidence by the courts below cannot be correct. Consequently, the conviction and sentence passed against the revision petitioner cannot be sustained.

In the result, this revision petition stands allowed

setting aside the conviction and sentence passed under Section 379 I.P.C. and the revision petitioner is acquitted for the said offence. The bail bond of the revision petitioner stands cancelled and he is set at liberty.

SD/

**B.SUDHEENDRA KUMAR,
JUDGE**

dl/24.11.2015

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PA to Judge