

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

Crl.Rev.Pet.No. 2 of 2015 ()

AGAINST THE JUDGMENT IN CRL.A 161/2013 of COURT OF ADDITIONAL
SESSIONS JUDGE - IV, KOTTAYAM DATED 31-10-2014

AGAINST THE JUDGMENT IN CC 614/2009 of COURT OF JUDICIAL FIRST CLASS
MAGISTRATE-I, KOTTAYAM DATED 26-04-2013
CRIME NO. 196/2009 OF AYARKUNNAM POLICE STATION , KOTTAYAM

REVISION PETITIONER/APPELLANT/ACCUSED:

SANTHOSH, AGED 39 YEARS
S/O.RAJAN, VALIYA VEEDU, PULICHUVADUBAGAM
KUDAMALLOOR KARA, AIYMANAM.

BY ADVS.SRI.BINOY VASUDEVAN
SMT.P.G.BABITHA

RESPONDENTS/RESPONDENTS/STATE:

-
1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM -682 031.
 2. THE SUB INSPECTOR OF POLICE,
AYARKUNNAM POLICE STATION, KOTTAYAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
08-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.R.P.No.2 of 2015

Dated 8th June, 2015

ORDER

This revision petition is directed against the judgment dated 31.10.2014 in Crl.A.No.161 of 2013 of the Court of Additional Sessions Judge-IV, Kottayam confirming the conviction entered against and the sentence imposed on, the revision petitioner as per judgment dated 26.4.2013 in C.C.No.614 of 2009 of the Court of Judicial First Class Magistrate-I, Kottayam. The revisionist was tried for offences punishable under Section 292(2)(a) of the Indian Penal Code and Section 3(1)(b) of the Young Persons (Harmful Publications) Act, 1956 (for short 'the Act'). The revision petitioner was convicted and sentenced for both the offences and for the offence under Section 292(2)(a) of the Indian Penal Code he was sentenced to undergo simple imprisonment for a period of six months and to pay a fine of ₹ 1000/- and in default of payment of fine he was directed to suffer simple imprisonment for a further period of two months. For the conviction under Section 3(1)(b) of the Act he was sentenced to undergo simple imprisonment for a period of six months. The sentence of imprisonment for the said offences were ordered to be run concurrently. Aggrieved by

the same, the revision petitioner filed Crl.A.No.161 of 2013. The appellate court found the contentions raised by the revision petitioner/appellant as meritless and that no ground whatsoever was found established to interfere with the conviction as also the sentence. Consequently, the appellate court dismissed the said appeal and confirmed the conviction as also the sentence. As stated earlier, this revision petition is filed against the said judgment.

2. The case of the prosecution, in succinct, is as follows:-

On 28.8.2009 at about 2.30 p.m. the revision petitioner was found in possession of 4 CDs containing blue films which would tend to corrupt young persons, to sale, at the north-eastern corner of Ayarkunnam private bus stand in Ayarkunnam Village. Ext.P3 F.I.R. was registered on 28.8.2009 and after investigation final report alleging commission of the aforesaid offences was filed against the revision petitioner. Subsequently, cognizance of the aforesaid offences was taken and it was taken on file and registered as C.C.No.614 of 2009. To prove the charge against the revision petitioner prosecution has examined PWS 1 to 5 and got marked Exts.P1 to P5. MO1 series of CDs were also identified. After closing the prosecution evidence the revision petitioner was questioned under Section 313 Cr.P.C. and he denied all the

incriminating circumstances put to him. However, he has not adduced any defence evidence, either oral or documentary. On evaluation of the evidence on record the trial court arrived at the conclusion that prosecution has succeeded in proving the charge for the aforesaid offences against the revision petitioner and accordingly, he was convicted and sentenced as aforesaid. As noticed hereinbefore, the conviction as also the sentence were confirmed by the appellate court.

3. I have heard the learned counsel for the revision petitioner and also the learned Public Prosecutor.

4. The learned counsel appearing for the revision petitioner contended that the conclusions and findings of the courts below are nothing but an outcome of perverse appreciation of evidence. Evidently, in this case, the courts below entered conviction against the revision petitioner concurrently under Sections 292(2)(a) of IPC and Section 3(1) (b) of the Act. In such circumstances, the scope for an interference in exercise of the revisional jurisdiction is limited. True that, still, interference is possible and permissible in case the revision petitioner succeeds in proving that he was convicted and sentenced solely because of utter, perverse appreciation of evidence on record. An interference is also possible in case the revision petitioner succeeds in proving that the

conclusions and findings of the courts below are absolutely against the weight of the evidence or that an incurable error causing failure of justice has been committed. In the context of the contentions it is only apposite to scan the pleadings of the revision petitioner in the revision petition carefully, more particularly, ground (H) therein. Ground (H) would reveal that the revision petitioner is not disputing the fact that the prosecution has succeeded in proving that MO1 series of CDs were found from his possession. In this context it is relevant to refer to ground (H) which reads as follows:-

“H. The courts below had not considered the case of the accused that he had not committed the offence as alleged. The Court below also had not considered the version of the petitioner that the police had created a panic in the bus stand and the people who were waiting had ran away. The CDs which were kept by somebody happened to be in the hands of the petitioner. This evidence had not been considered by the Courts below”

(emphasis added)

Grounds (A) to (K) raised by the revision petitioner in the revision petition would further show that he got no case at all that the evidence tendered by the prosecution witnesses were wrongly adverted to in the impugned judgments. It is true that the revision petitioner got a grievance that evidence on record were erroneously appreciated by the

courts below. The said grounds would also reveal that the revision petitioner did not have any contention that MO1 series of CDs did not contain postures of men and women indulging in sexual intercourse in nude. In this context, it is to be noted that in the judgment in C.C.No.614 of 2009 the learned Magistrate specifically stated that the CDs were played on a television and he witnessed the same and they were found to have contained the postures of men and women indulging in sexual intercourse in nude. Evidently, the oral testimonies of the prosecution witnesses viz., PW1 to PW5 are to the effect that MO1 series of CDs contained postures of men and women indulging in sexual intercourse in nude. The evidence of PW1, an independent witness discussed in the judgments would go to show that he had seen the revision petitioner selling CDs by placing them on the floor and that PW4 came there along with Police party and seized obscene CDs from the possession of the revision petitioner. He would also depose that the CDs thus seized from the possession of the revision petitioner were played on a television in the shop of PW2 and also in the police station and they were found as obscene CDs. He admitted his signature in Ext.P1 seizure mahazar whereunder the CDs were seized. He identified the appellant-accused and MO1 series of CDs. The courts below also found that PW2 in whose shop the said CDs were played deposed in support of the

prosecution. He deposed that he was conducting an electronic shop and on 28.8.2009 at about 3 p.m. police came to the shop with CDs and it was played on a television with the help of a DVD player and the CDs were found obscene in nature and thereupon he signed Ext.P1 mahazar. He too identified the accused as also MO1 series. Evidently, both PWs 1 and 2 admitted their signatures in Ext.P1 mahazar. PW3 the police constable who accompanied PW4 at the time of occurrence, evidently deposed before the court that on 28.8.2009 at about 2.30 p.m. he was on patrol duty along with PW4 and when they reached near the north-eastern corner of Ayarkunnam private bus stand they found the accused indulging in selling of CDs. Four obscene CDs were found from him under Ext.P1 mahazar. He too, identified the accused and also MO1 series of CDs. PW4 is the Investigating Officer and he would depose that on 28.8.2009 at about 2.30. p.m. he found the revision petitioner with MO1 series of CDs placed on a mat at the north-eastern corner of private bus stand, Ayakunnam and after seizing the same they were played on a television from the shop of PW2 with the help of a DVD player and were found containing obscene blue films and the revision petitioner was arrested at 3.45 p.m. on the same day. PW4 identified the accused and MO1 series of CDs. The CDs which were seized from the revision petitioner under Ext.P1 mahazar were produced before the court under

Ext.P2 151A form. He would also depose that after identifying MO1 series as CDs containing obscene blue films the revision petitioner was arrested with the material objects and Ext.P3 F.I.R. was registered against him. PW5 was the Tahsildar who verified the contents of MO1 series. He prepared Ext.P5 report to the effect that the contents in MO1 series of CDs were verified and he would depose that the said CDs contained postures of men and women indulging in carnal intercourse in nude and they are capable of appealing to the prurient interests of the viewers and arousing corrupt and lascivious feelings of persons who are likely to see the matter embodied therein. Thus, it is obvious that the evidence of PW1 to PW5 would reveal that MO1 series of CDs contained postures of men and women in a completely nude posture indulging in carnal intercourse. As noticed hereinbefore, though the revision petitioner alleges erroneous appreciation of evidence it was not argued before me that PW1 to PW5 had not tendered evidence in the manner they were adverted to, in the judgments of the courts below.

5. Ground (H) raised by the revision petitioner in this revision petition, as extracted above, would undoubtedly go to show that the revision petitioner himself got no case that MO1 series of CDs were not found from his possession. What he has stated therein is that the CDs

which were kept by somebody happened to be in his hands. The uncontroverted evidence of PW1, PW3 and PW4 would go to show that MO1 series of CDs were found from the possession of the revision petitioner. Their evidence as also the evidence of PWs 2 and 5 would reveal that MO1 series of CDs contained postures of men and women indulging in sexual intercourse in nude. In this context, Section 292(2) (a) has to be looked into which reads as follows:-

"292. Sale, etc. of obscene books, etc.- (1)

(2) Whoever-

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

.....

shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees."

A careful perusal of the provisions under Section 292, IPC would reveal that the word 'obscenity' has not been defined thereunder. At the

same, time, by judicial pronouncements the word 'obscenity' has been attempted to explain by laying down tests to indicate which act and under what particular context would come within the arena of obscenity. There can be no doubt that the obscenity has tendency to deprave and corrupt those whose minds are open to such immoral influence. The evidence as discussed above which remained uncontroverted would reveal that MO1 series of CDs contained postures of men and women indulging in sexual intercourse in nude. When that be the contents in MO1 series of CDs it could not be said that it would not constitute the offence under Section 292(2), IPC. The said provision would reveal that even if no actual sale was effected still, in such circumstances, as established, it would attract the offence under Section 292(2)(a) IPC. However, in this case, the evidence of PWs 1, 3 and 4 would reveal that MO1 series of CDs were placed on a mat at the north-eastern corner of Ayarkkunnam private bus stand and in view of the number of such CDs placed thereunder including MO1 series it could not be, by any stretch of imagination, said that they were not intended for sale. In such circumstances, I do not find any reason to interfere with the conclusions and findings of the courts below that the revision petitioner has committed the offence punishable under Section 292(2)(a) of IPC. MO1 series of CDs contained obscene materials, as mentioned above, are

certainly harmful publications which would tend to corrupt young persons in whose hands they might fall. The finding of the courts below that the petitioner has committed offence under Section 3(1)(b) of the Act also cannot be said to be suffering from any legal infirmity. In the said circumstances, I am of the considered view that the conviction entered against the revision petitioner concurrently by the courts below calls for no interference in exercise of the revisional jurisdiction.

5. As noticed hereinbefore, the revision petitioner was sentenced for the conviction under Section 292(2)(a) of IPC to undergo simple imprisonment for a period of six months and to pay a fine of ₹ 1,000/- and he was sentenced to undergo simple imprisonment for a period of six months for the offence under Section 3(1)(b) of the Act. The sentence of imprisonment under both heads are ordered to be run concurrently. The sentences for the aforesaid offences imposed by the trial court were confirmed by the appellate court. Considering the nature of the offence for which the revision petitioner was found guilty and taking into account the sentences imposed for the aforesaid offences I do not think that they could be said to be excessive. In fact, according to me, sentence imposed on the petitioner is his comeuppance. In the circumstances, I do not find any reason to interfere with the sentence

imposed on the revision petitioner for the offence under section 3(1)(b) of the Act.

This revision petition has to fail and accordingly, it is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS