

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

Crl.Rev.Pet.No. 3305 of 2009 ()

CRL.A 764/2007 of II ADDL.SESIONS COURT,ERNAKULAM
CC 1400/2003 of JUDL.M.F.C.-I,ERNAKULAM

REVISION PETITIONER/APPELLANT/ACCUSED::

BASHEER, S/O.ABDUL REHIMAN,
KANNACHENCHATTU VEETIL, MEENATHUR DESOM, TIRUR TALUK
MALAPPURAM DISTRICT.

BY ADV. SRI.C.M.MOHAMMED IQUABAL

RESPONDENT/COMPLAINANT::

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
16-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P.No.3305 of 2009

Dated this the 16th day of November 2015

O R D E R

The revision petitioner is the accused in CC 1400 of 2003 on the files of the Court of the Judicial Magistrate of First Class-1, Ernakulam, who in this revision petition challenges the concurrent finding of conviction and sentence passed by the courts below under Section 379 I.P.C.

2. Heard.

3. The prosecution allegation is that on 19.4.2003 in between 3.30 p.m. and 4.30 p.m., the revision petitioner committed theft of Rs.3,000/- and two gold bangles from

the bag of the *de-facto complainant* while she was travelling in Train No.T 6330 from Kozhkode to Chengannur.

4. Before the trial court, PW1 to PW4 were examined and Exts.P1 to P3 were marked for the prosecution, besides identifying MO1 and MO2. No evidence was adduced on the side of the revision petitioner.

5. PW1 is the *de-facto complainant*. She stated about the incident in tune with the prosecution case. PW2 was the Head Constable of Ernakulam Railway Police Station during the relevant period. On 21.4.2003, he was on emergency duty. On that day, at 11.40 p.m., the revision petitioner was found in a suspicious situation near to the Railway station, Aluva. On getting suspicion, PW4

questioned him and recovered MO1 and MO2 from him. PW2 witnessed the recovery of MO1 and MO2 from the revision petitioner by PW4. PW4 also stated about the arrest and recovery of MO1 and MO2 from the revision petitioner in tune with the evidence of PW2. PW1 identified MO1 bangle and also the revision petitioner. The evidence of PW1 would show that she had sufficient opportunity to see the revision petitioner prior to the theft.

6. The courts below, relying on the documentary as well as oral evidence adduced by the complainant, concurrently found that the revision petitioner committed the offence under Section 379 I.P.C. The defence set up by the revision petitioner was repelled by the courts below. Since there is concurrent finding on facts, this Court will

not be justified in interfering with the same unless the finding is perverse or incorrect. No circumstance has been brought to my notice to indicate that the appreciation of evidence by the courts below was perverse or incorrect. In the said circumstances, the concurrent finding by the courts below that the revision petitioner committed the offence under Section 379 I.P.C., does not warrant any interference by this Court.

7. As regard the sentence, the learned counsel for the revision petitioner has pleaded for leniency. The revision petitioner is aged 33 years. The learned counsel for the revision petitioner has submitted that the revision petitioner is not involved in any other offence of similar nature. There is no material before the court to indicate

that the revision petitioner was previously convicted for any other offence of similar nature. Considering the facts and circumstances of the case, including the fact that the revision petitioner was a first time offender, I am of the view that the sentence awarded by the appellate court can be further modified and reduced to imprisonment for six months to secure the ends of justice. Accordingly, I order so.

In the result, this revision petition stands allowed in part,

- (i) confirming the verdict of guilty and conviction passed by the courts below under Section 379 I.P.C.,

- (ii) the sentence awarded by the courts below under Section 379 I.P.C. stands modified and reduced to imprisonment for six months.

The revision petitioner shall surrender before the court below on 10.12.2015 to suffer the sentence.

sd/
B.SUDHEENDRA KUMAR,
JUDGE

dl/19.11.2015

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PA to Judge