

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

Crl.Rev.Pet.No. 95 of 2015 ()

**AGAINST THE JUDGMENT IN CRLA 480/2010 of I ADDL. SESSIONS COURT, THALASSERY
DATED 30-01-2014**

AGAINST THE JUDGMENT IN CC 208/2009 of J.M.F.C.-II, KANNUR DATED 30-10-2010

REVISION PETITIONER/APPELLANT/ACCUSED:

**K.V.GIREESH S/O.GANGADHARAN,
C.NO.2221, CENTRAL PRISON, KANNUR.**

BY ADVS.SREEJITH S.R (STATE BRIEF)

RESPONDENT(S)/RESPONDENT/COMPLAINANT & STATE:

**STATE OF KERALA- S.H.O., VALAPATTANAM POLICE STATION,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-31.**

BY PUBLIC PROSECUTOR SRLJUSTINE JACOB

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
05-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

Crl.R.P. No.95 of 2015

Dated this the 5th day of June, 2015.

O R D E R

Revision petitioner is the accused in C.C.No.208/2009 of the Judicial First Class Magistrate's Court-II, Kannur. He was prosecuted along with second and third accused for the offences punishable under Sections 457 and 380 of the Indian Penal Code. After trial, he was found guilty of the said offences and convicted thereunder. He was sentenced to undergo rigorous imprisonment for two years under Section 457 IPC and rigorous imprisonment for three years under Section 380 IPC. The sentences shall run concurrently. All accused were entitled to get set off under Section 428 of Cr.P.C. Aggrieved by conviction and sentence, though he had preferred Crl.A.No.480/2010 before the I Additional Sessions Court, Thalassery, after re-appreciating the entire evidence on record, the learned Sessions Judge also

concurred with the verdict of guilt found by the trial court and confirmed the conviction and sentence as such, without any interference. The legality and correctness of the concurrent findings of conviction and sentence are under challenge in this revision petition.

2. Though this revision petition is filed on various grounds challenging the concurrent findings of conviction and sentence, the learned counsel for the revision petitioner as State Brief submits that the challenge under the revision at present is confined to correctness of the sentence alone. The learned counsel submits that the revision petitioner has been undergoing imprisonment in execution of the sentence imposed on him under the impugned judgment from 13/1/2003 onwards and earlier he had undergone imprisonment for a period of 588 days also. According to the learned counsel, the sentence imposed on the revision petitioner is disproportionate with the nature and gravity of the offences and it is too excessive and harsh. It is further submitted that the

revision petitioner is a driver by profession and he is the only bread winner of his family consists of four minor children.

3. The learned Public Prosecutor opposed the arguments of the learned counsel appearing as State Brief, but he admitted that the revision petitioner has been undergoing imprisonment from 31/3/2014 and he is entitled to get set off for 588 days. So the imprisonment period will be terminated on 20/8/2015 only. Though it is stated that he is involved in other offences, going by the impugned judgment no evidence had been adduced to prove that he is convicted in any other offence. A substantial portion of the imprisonment period is over as he has been undergoing imprisonment from 31/3/2014 and he is entitled to get set off for 588 days. It is submitted that he has a family consists of four minor children and he is the only bread winner of his family.

4. Having regard to the aggravating and mitigating circumstances involved in the instant case, I am of the opinion that the substantive sentence of

imprisonment imposed on the revision petitioner is a little excessive.

5. Consequently, in modification of the sentence imposed by the Trial Court and confirmed by the Appellate Court in appeal, the substantive sentence of imprisonment for three years for the offence under Section 380 IPC will stand reduced and modified to the period during which he had already undergone imprisonment only and he shall be released forthwith, if not required in any other case.

This revision petition is allowed.

Sd/-
K. HARILAL, JUDGE

okb.