

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

Crl.Rev.Pet.No. 236 of 2015 ()

**AGAINST THE JUDGMENT IN Crl. APPEAL 52/2012 of ADDL. SESSIONS COURT - I,
KALPETTA, DATED 06-06-2014**

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**AGAINST THE JUDGMENT IN CC 237/2008 of J.M.F.C.-II,
MANANTHAVADY, DATED 27-02-2012**

REVISION PETITIONER(S):

**ANIL KUMAR, AGED 39 YEARS,
S/O. NARAYANAN, MUNDOPARAMBIL HOUSE,
PANDIKKADAVU, AGRAHARAM, MANANTHAVADY.**

BY ADV. SRI.KRISHNA PRASAD. S

RESPONDENT(S):

**STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM-682 031.**

BY PUBLIC PROSECUTOR SRI. N. SURESH

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
19-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

SS

K. RAMAKRISHNAN, J.

Crl.R.P. No. 236 of 2015

Dated this the 19th day of February, 2015

ORDER

Accused in C.C.237/2008 on the file of the Judicial First Class Magistrate Court-II, Mananthavady, is the revision petitioner herein. The revision petitioner was charge-sheeted by the Sub Inspector of Police, Mananthavady police station in Crime No.110/2008 of that police station under Section 294(b), 341 and 323 of the Indian Penal Code.

2. The case of the prosecution in nut shell was that, on 24.02.2008 at about 12.00 midnight, the revision petitioner wrongfully restrained the auto-rickshaw driven by the defacto-complainant at Agraharam and abused him with obscene language and kicked on his right waist and due to that he fell down and he pressed his testicle and inflicted injury on his nose and head by way of fisting with his hands

and thereby he had committed the offence punishable under Section 294(b), 341 and 323 of the Indian Penal Code.

3. After investigation, final report was filed and the case was taken on file as C.C.No.237/2008 on the file of the Judicial First Class Magistrate Court-II, Mananthavady. When the revision petitioner appeared before the court below, the particulars of offence were read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 10 were examined and Exts.P1 to P5 were marked on their side. After closure of the prosecution evidence, the revision petitioner was questioned under Section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that he had not committed any offence and he has been falsely implicated in the case. No defence evidence was adduced on his side. After

considering the evidence on record, the court below found the revision petitioner not guilty under Section 294(b) of the Indian Penal Code and acquitted him of that charge under Section 255(1) of the Code of Criminal Procedure, but found him guilty under Section 341 and 323 of the Indian Penal Code and convicted him thereunder and sentenced him to undergo simple imprisonment for ten days for the offence under Section 341 of the Indian Penal Code and six months for the offence under Section 323 of the Indian Penal Code and directed the sentences to run concurrently. Aggrieved by the same, he filed Crl.Appeal No.52/2012 before the Sessions Court, Wayanad at Kalpetta, which was made over to the Additional Sessions Court-I, Kalpetta, for disposal and the learned Additional Sessions Judge by the impugned judgment, dismissed the appeal, confirming the order of conviction and sentence passed by the court below. Dissatisfied with the same, the present revision has been

filed by the revision petitioner/accused before the court below.

4. Considering the nature and scope of enquiry, this court felt that the revision can be disposed of after admitting the same and hearing the counsel for the revision petitioner and the learned Public Prosecutor. So the revision is admitted, heard and disposed of today itself.

5. The counsel for the revision petitioner submitted that, except the interested testimonies PWs 1, 2 and 6, other independent witnesses turned hostile and they did not support the case of the prosecution and in the absence of corroboration from independent witnesses, it is not safe to rely on the interested version of the witnesses to convict the accused. So the case of the prosecution is not probable and the lower court should have acquitted him. He had also submitted that, considering the nature of injury sustained, the sentence imposed is harsh.

6. Learned Public Prosecutor supported the concurrent findings of the court below on this aspect.

7. The case of the prosecution as emerged from the witnesses was that, on 24.02.2008 at about 12.00 midnight, PW1 was driving the auto-rickshaw and reached the place of occurrence, the revision petitioner came there and wrongfully restrained him by stopping his auto-rickshaw and abused him and kicked him on his right waist, due to that PW1 fell down on the road and thereafter he pressed the testicles and also fisted on his head and nose and cause injury to him. Immediately when PWs 2 to 4 and 6 reached the place, he ran away from the place. Thereafter he was taken to the hospital by PWs 2, 3 and 6 from where he was seen by PW5, who issued Ext.P3 wound certificate. Thereafter he was referred to Medical College Hospital, and on getting intimation regarding the same, PW8 went to the hospital and recorded Ext.P1 statement of

PW1 and came back to police station and registered Ext.P5 first information report as Crime No.110/2008 of Mananthavady police station under Section 294(b), 341 and 323 of the Indian Penal Code against the revision petitioner. Investigation in this case was conducted by PW9 and he went to the place of occurrence and prepared Ext.4 scene mahazar in the presence of PW7 and another. He questioned the witnesses and recorded their statements. He completed the investigation and submitted final report against the revision petitioner. The prosecution relies on the evidence of PWs1, 4 and 6, who are the eye witnesses to the incident. Though PWs 2 to 4 were also examined as eye witnesses, they did not support the case of the prosecution. PW1 had deposed in tune with the statement given by him in Ext.P1. PW2 though admitted that, he had come to the place and saw somebody attacking PW1, but he did not identify the person. He had denied having stated in Ext.P2

in his statement before the police that he had seen the incident and revision petitioner had attacked PW1. PWs 3 and 6 have deposed that, on hearing the cry of PW1, they reached the spot and saw the revision petitioner beating PW1 and when they came there, he ran away from the place and they took PW1 to hospital, as he was bleeding injury on his nose. He was first taken to District Hospital Mananthavady, from where he was referred to Medical College Hospital. So there is nothing to disbelieve the evidence of PWs 1 and 6 which will go to show that the revision petitioner had caused voluntarily hurt to PW1 and he had wrongfully restrained him from moving in any direction also. The wound certificate shows that, he sustained some bleeding injury on his nose. It is true that, the medical documents from Medical College Hospital has not been produced. But it will be seen from Ext.P1 first information statement that, the statement was recorded by

the Head Constable from the Medical College Hospital, when he was undergoing treatment there. However, non-production of any document from the Medical College Hospital is not fatal in this case, as he did not sustained any greivous injuries and that will not have any impact in the decision of the case as well.

8. So considering the circumstances, courts below were perfectly justified in coming to the conclusion that the revision petitioner had wrongfully restrained the defacto-complainant and voluntary caused hurt to him and thereby he had committed the offences punishable under Section 341 and 323 of the Indian Penal Code and rightly convicted him for the said offence and the concurrent findings of the court below do not call for any interference.

9. As regards the sentence is concerned, the court below had sentenced him to undergo simple imprisonment for ten days under Section 341 of the Indian

Penal Code and further sentence to undergo six months under Section 323 of the Indian Penal Code and directed the sentence run concurrently. Considering the nature of injury sustained, this court feels that the sentence of six months imprisonment imposed by the court below for the offence under Section 323 of the Indian Penal Code appears to be little harsh. So the retaining sentence of imprisonment for ten days for the offence under Section 341 of the Indian Penal Code and further sentencing him to undergo simple imprisonment for one month and also to pay a compensation of ₹5,000/- to PW1, in default to undergo simple imprisonment for two months will be sufficient and that will meet the ends of justice. So the sentence imposed by the court below is modified as follows:

The revision petitioner is sentenced to undergo simple imprisonment for ten days for the offence under Section 341 of the Indian Penal Code and further sentence

to undergo simple imprisonment for one month and also to pay a compensation of ₹5,000/- to PW1, in default to undergo simple imprisonment for two months under Section 357(3) of the Code of Criminal Procedure. If the revision petitioner had been arrested and detained in prison and undergone any imprisonment in this case, then that will be given set off under Section 428 of the Code of Criminal Procedure. If the compensation amount is realised, court below is directed to pay the same to PW1 on getting necessary acknowledgment.

With the above modification of the sentence alone the revision petition is allowed in part and disposed of accordingly. Office is directed to communicate this order to the concerned court immediately.

Sd/-

K. RAMAKRISHNAN, JUDGE

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P.A. to Judge

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