

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

Crl.Rev.Pet.No. 553 of 2015 ()

**AGAINST THE JUDGMENT IN CRA 638/2013 of ADDL. SESSIONS COURT-II,
KOZHIKODE DATED 17-03-2015**

**AGAINST THE JUDGMENT IN CC 352/2013 of JUDICIAL FIRST CLASS MAGISTRATE-III,
KOZHIKODE DATED 02-12-2013**

REVISION PETITIONER/APPELLANT/ACCUSED :

**N.K.RAJAN, AGED 52 YEARS
S/O.KANNAN NAIR, 'RAMYA NIVAS', ERANJIPALAM,
CHAKKITTADA, KOZHIKODE.**

**BY ADVS.SRI.P.S.SREEDHARAN PILLAI
SRI.T.K.SANDEEP
SRI.ARJUN SREEDHAR**

RESPONDENT/RESPONDENT/COMPLAINANT & STATE :

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-31.**

BY SRI.JIBU P. THOMAS, PUBLIC PROSECUTOR

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 28-05-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:**

AMV

K.HARILAL, J.

.....
Crl.R.P.No. 553 of 2015 ()

.....
Dated this the 28th day of May, 2015

ORDER

The revision petitioner is the accused in C.C.No.352 of 2013 on the files of the Judicial First Class Magistrate's Court-III, Kozhikode. He was prosecuted for the offences punishable under Secs.448, 353, 294(b) of the Indian Penal Code read with Sec.3(1) of the Prevention of Damage to Public Property Act, 1984 [for short, PDPP Act]. After trial, he was convicted for the offences punishable under Sec.448 of the IPC and Sec.3(1) of the P.D.P.P. Act and acquitted of all the offences. Feeling aggrieved, though he had preferred Crl. Appeal No.638 of 2013, after re-appreciating the entire evidence on record, the learned Sessions Judge also concurred with the findings of guilt found against the revision petitioner and confirmed the conviction and sentence as such and dismissed the appeal. The legality and propriety of the concurrent findings of conviction and sentence are under challenge in this revision.

2.The prosecution case, in brief, is that on 6/11/2010 at 10.30 p.m. the accused criminally trespassed into the office of the K.S.E.B. at Karapparamba, uttered obscene words and obstructed P.W.2 from discharging his official duty from attending phone calls and broke glass on the top of the table and thereby caused damages to the tune of ₹650/- to Government and they committed the aforesaid offences.

3.The accused pleaded not guilty. Prosecution examined P.W.1 to P.W.7 and marked Exts.P1 to P5 and MO1. No evidence had been adduced from the defence side.

4.After trial the learned Magistrate found that the revision petitioner is guilty of the said offence and convicted him and he was sentenced to undergo simple imprisonment for one month for the offences punishable under Section 448 of the Code of Criminal Procedure and six months imprisonment and a fine of Rs.2,000/- under Section 3 (1) of PDPP Act.

5. Heard the learned counsel for the revision petitioner and the learned public prosecutor.

6. The learned counsel for the petitioner advanced arguments assailing the concurrent findings of conviction and sentence. The learned counsel submits that the conviction is based on the solitary evidence of P.W.2, who is an interested witness. Secondly P.W.2 himself admitted that the petitioner/accused was working as a contract driver in that office at the time of commission of the offence. If that be so, he cannot be prosecuted and punished for the offence under Section 448 of the Indian Penal Code. It is also contended that as regards the offence under Section 3(1) of PDPP Act, no reliable evidence has been brought out by the prosecution to prove the accused has committed the said offence by breaking the glass.

7. The scope and extent of jurisdiction under Section 397 read with Section 401 of IPC is very limited confining to

the examination of illegality, impropriety and correctness of the findings whereby the court below has taken a decision. So also Revisional Court can interfere with appreciation of evidence, if it is established that the appreciation of evidence is tainted with perversity. So unless the appreciation of evidence is tainted with perversity, this Court has no jurisdiction to re-appreciate the entire evidence on record and arrive at a different finding other than the concurrent findings of the court below. With this yardstick, I have scrutinised the findings of the court below.

8.Going by the impugned judgment, it is seen that P.W.2 is a lineman at K.S.E.B., Karapparamba, who is an eye-witness of the incident. P.Ws.3 and 4 are also employees at K.S.E.B., Karapparamba. P.W.1 is the Assistant Engineer of K.S.E.B., who lodged Ext.P1 complaint to the police. P.W.2 deposed that while he was on duty at K.S.E.B., Karapparamba on 06.11.2010 at 10.15 p.m., the accused trespassed into the office of the

K.S.E.B., Karapparamba and hit on the desk complaining that, light near Marad Court was not functioning and uttered obscene words against him. He further deposed that the book placed over the table were thrown by him and on account of the hit, the glass placed on the top of the table was broken, causing loss to the tune of Rs.650/-. The broken glass pieces are recovered and produced as M.O.1. The said evidence is supported by the evidence of P.W.3, P.W.4 and P.W.1, who are also employees of that office.

9.The learned counsel for the petitioner pointed out that the occurrence witnesses are interested witnesses particularly P.W.2, the star witness on whose deposition conviction is based. I am unable to accept the said argument in view of the decision laid down by the Supreme Court in Kartik Malhar v. State of Bihar [1996 (1) SCC 614]. The Apex Court clarified and held that “the term 'interested', postulates that the witness must have some direct interest in having the accused

somehow or the other convicted for some animus or for some other reason”.

10.Going by the evidence on record, it is seen that while cross examining P.W.2, the counsel for the accused put a suggestive question that he was deposing against the accused on the reason that he complained the conduct of the P.W.2 before the authority. Apart from this oral assertion, no evidence has been adduced to show that these witnesses were nursing any kind of ill will or enmity towards the petitioner/accused so as to see that this petitioner/accused is convicted for some other reason. In view of the above decision, the said argument will stand rejected.

11.The second point is that since P.W.2 himself admitted that the accused is working as a contract worker attached with that office, he cannot be convicted for the offence under Section 448 of IPC as his entry to the office is lawfull, rightful and shall not deemed to be a

house-trespass. To support to the said submission, the learned counsel for the petitioner pointed out the deposition of P.W.2 wherein P.W.2 himself has stated that the accused is a contract driver of K.S.E.B. According to the charge, he was a contract driver attached with the office of K.S.E.B. Thus as regards status of the accused as to whether the accused is an employee of the K.S.E.B or not, the prosecution evidence itself is inconsistent and unreliable. So the petitioner is entitled to get the benefit of doubt with respect to commission of offence under Section 448 of IPC. Consequently, conviction entered and sentence imposed on the revision petitioner for the offence punishable under Section 448 of IPC will stand set aside.

12.Coming to the third point, it was contended that the evidence of P.W.3 and P.W.4 is not reliable to prove the offence alleged against the accused under Section 3(1) of P.D.P.P. Act. Going by the judgment under challenge, the learned sessions Judge observed that, even though,

P.Ws.3 and 4 did not see the actual incident they saw the accused coming to the office and complaining about the non functioning of the lights and going inside the office there occurred an altercation and thereafter they further found the glass on the top of the table was broken. Both P.W.3 and P.W.4 testified that the accused went inside the office and there was an altercation with P.W.2. Though, they are not eye witnesses, their evidence fully supports and gives assurance to the evidence of P.W.2. P.W.2 deposed that the accused trespassed into the office and caused obstruction to his duty and prevented him from attending the phone calls and broke the glass on the top of the table by hitting. As rightly observed by the appellate court those evidences are sufficient to connect the accused with the alleged incident. Particularly there is no reason for P.W.2 to 4 to speak against the accused. The recovery and production of the glass pieces as M.O.1 supports the prosecution case under PDPP Act as such. Thus the evidence of P.W.2 to P.W.4 coupled with recovery of M.O.1 glass

piece is sufficient to bring home guilt of the accused under Section 3(1) of P.D.P.P. Act.

13.I have meticulously evaluated the judgment passed by the trial court and appellate court. The charge against the accused stands proved by the oral evidence of P.Ws.2 to 4. There is no reason to disbelieve their evidence and nothing brought out to discredit their evidence by the cross examination of those witnesses. In this analysis, I find that there is no illegality or impropriety in the impugned judgment under challenge and I do not find any perversity in the appreciation of the evidence from which those findings have arrived at.

14.The learned counsel for the petitioner submits that the sentence imposed on the revision petitioner is disproportionate with the nature and gravity of the offence and too excessive and harsh. Needless to say the offence stands proved against the petitioner is an offence against the society. Therefore, I am of the

opinion that prison term is inevitable to secure the interest of deterrence. Prison term can be imposed to secure the interest of the deterrence; but deterrence in a case like this does not necessarily depend on the length of the term. The very prospect of going to prison irrespective of the length of the term is sufficient for the interest of deterrence. The compensatory aspect for the loss caused to the public exchequer also has to be considered while determining the quantum of compensation. It is also to be borne in mind that misplaced sympathy cannot have any place in criminal adjudicatory process, and if the punishment is so lenient it may shock the conscious of the society.

15. Having regard to all these facts, I find that the sentence imposed on the revision petitioner is a little excessive and harsh. He can be reformed by a short prison term. In supersession of the sentence imposed by the trial court and confirmed by the appellate court, the simple imprisonment for six months for the offence

punishable under Section 3(1) of PDPP Act will stand reduced and modified to simple imprisonment for one month and to pay a cost of Rs.10,000/-. In default, the revision petitioner shall undergo simple imprisonment for two more months.

This revision petition is allowed in part.

Sd/-
K.HARILAL,
JUDGE.

AMV/01/06/

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P.A.TO JUDGE