

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

Cr1.Rev.Pet.No. 634 of 2015 ()

CRL.A 348/2013 of ADDL. SESSIONS COURT - V, KOZHIKODE
CC 320/2012 of SPL.J.M.F.C.(MARADU CASES) , KOZHIKODE

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REVISION PETITIONER(S)/APPELLANT/ACCUSED:

MIDHUN JAN, AGED 29 YEARS, S/O. BABU JAN,
EDAKANDIYIL HOUSE, KIZHAKKUMURI, KAKKODI,
NEAR KIRALLOOR SCHOOL, KOZHIKODE.

BY ADVS.SRI.SANTHARAM.P
SMT.REKHA ARAVIND
SMT.T.S.REMYA

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 03-06-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. No.634 of 2015

Dated this the 3rd day of June, 2015.

O R D E R

Revision petitioner is the accused in C.C.No.320/2012 on the files of the Special Judicial First Class Magistrate's Court (Marad Cases), Kozhikode. He was prosecuted for the offence punishable under Section 3(2)(e) of the Prevention of Damage to the Public Property Act, 1984, (the 'PDPP Act', for short). After trial, he was convicted and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.10,000/- under Section 3 (2)(e) of the PDPP Act and in default to undergo simple imprisonment for three months. If the fine amount is realised, Rs.8,000/- shall be paid to the Assistant Transport Officer, KSRTC Depot, Thamarassery as compensation under Section 357(1) of the Cr.P.C. The accused is entitled to set off under Section 428 of

Cr.P.C. Though he preferred CrI.A.No.348/2013 before the V Additional Sessions Judge, Kozhikode Division, challenging the conviction and sentence, the appellate court also after re-appreciating the entire evidence on record concurred with the findings of conviction; but modified the sentence by setting aside the compensation portion alone and sustained the rest of the sentence as such. The legality and propriety of the concurrent findings of conviction and the modified sentence are under challenge in this revision petition.

2. The prosecution case is that on 4/11/2011 at 23.30 hours the accused had caused damage to the wind screen of the KSRTC bus bearing No.KL-15-3223 which was driven by CW2 and in which CW1 was working as conductor and when the bus reached Nadakkavu bus stop of Kozhikode-Wynad road, it was stopped a little ahead of the bus stop. The wind screen of the bus was broken by the accused which caused a loss to the tune of Rs.12,600/- to the KSRTC and thereby the charge was laid before court.

3. The accused pleaded not guilty. To prove the

prosecution case, P.Ws.1 to 10 were examined and Exts.P1 to P9 and M.Os.1 and 2 were marked. No evidence had been adduced in defence and when he was examined under Section 313 Cr.P.C. he denied all the incriminating circumstances.

4. The learned counsel for the revision petitioner submits that the courts below miserably failed to appreciate the facts and evidence in its correct perspective and there is no reliable evidence to bring home guilt of the accused under Section 3(2)(e) of the PDPP Act. According to the learned counsel no reliance can be placed on the evidence of P.Ws.1 and 2 as they are interested witnesses. It is also contended that the sentence imposed on the revision petitioner is disproportionate with the nature and gravity of the offence and the same is harsh and excessive.

5. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

6. The scope and extent of jurisdiction under Sections 397 and 401 of the Cr.P.C. are very limited and confined to examination of legality, propriety and

correctness of the findings whereby the courts below had arrived at a conclusion. This Court is not inclined to re-appreciate the entire evidence on record unless any kind of perversity is pointed out and accepted.

7. With this yardstick, I have scrutinised the concurrent findings of conviction whereby the courts below found the accused guilty of the offence under Section 3(2)(e) of the PDPP Act. The learned counsel advanced arguments assailing the evidence of P.Ws.1 and 2. According to the learned counsel, the accused has been falsely implicated in the offence at the instance of P.Ws.1 and 2. Going by the impugned judgment, it is seen that the learned Sessions Judge has meticulously evaluated the evidence of P.Ws.1 and 2 and believed their evidence to base conviction. The appellate court observed that P.W. 2 is a driver of the KSRTC bus and he saw the accused hitting on both wind screens of the bus with a stone piece. According to him, the head light of the vehicle was switched on. The accused initially broke the glass at the left side. He again went to the road side and broke the glass on

right side. Those glasses are just in front of the seat of the driver. As rightly observed by the court below, P.W.2 is the first and the best person who can identify the assailant who had broken the front wind screen of the bus. The evidence of P.W.1 shows that when he heard the noise of breaking glass, he got down from the bus and came in front of it and then the accused was seen hitting on the glass at the right side of the bus with a stone. Glass pieces were produced as M.O.2 series and granite piece used for hitting the glass was produced as M.O.1. It is pertinent to note that the accused was caught hold of by P.W.1 and other passengers in the bus and handed over to the police. The evidence of P.W.1 and 2 are supported by the evidence of P.W.10 Sub Inspector of Police and P.W.9 A.S.I. The damage caused to public property has been assessed by P.W.8 Assistant Transport Officer attached to the KSRTC, Thamarassery Depot and he calculated the loss of revenue to KSRTC and the damage caused to the bus. He also issued a certificate quantifying the loss which is marked as Ext.P8 and issued on the basis

of the certificate obtained from the Depot Engineer who assessed the damage.

8. I find no illegality or impropriety in the findings in the impugned judgment and there is no perversity in the appreciation of evidence from which those findings are arrived.

9. Coming to the sentence, I find that imposition of prison term is inevitable to secure the interest of deterreny. But deterreny in a case like this does not necessarily depend on the length of the term that the offender spends behind the bars. The very prospect of going to prison irrespective of the length of the term is sufficient to meet the interest of deterreny. At the same time, misplaced sympathy has no place in a criminal adjudicatory process. The prosecution has no case that the accused is a habitual offender. Going by the evidence on record, it is seen that the commission of the offence was caused by a sudden passion only and the act of the accused is not a pre-meditated one.

10. On a proper balancing of the above two views, I find that the substantive sentence of imprisonment for

six months imposed on the revision petitioner is harsh and excessive and he is entitled to get benefits under the proviso to Section 3(2) of the PDPP Act. But at the same time, he has to pay compensation to the State for the loss caused to public exchequer due to the criminal act done by him and there is no scope for interfering with the fine amount. The substantive sentence of rigorous imprisonment for six months will stand reduced and modified to simple imprisonment for one month only.

This criminal revision petition is allowed in part.

Sd/-
K. HARILAL, JUDGE

okb.