

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

Crl.Rev.Pet.No. 1388 of 2011 ()

AGAINST THE JUDGMENT IN CRA 98/2010 of ADDL. DISTRICT COURT
(ADHOC II), THRISSUR DATED 7-04-2015

AGAINST THE JUDGMENT IN ST 104/2008 of J.M.F.C-III, THRISSUR
DATED 22-01-2010

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

VARGHESE, AGED 55 YEARS, S/O. VARGHESE,
PUTHENPARAMBIL HOUSE, KATTILAPOOVAM DESOM
MADAKKATHARA TALUK.

BY ADVS.SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI. R. GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 07-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Crl.R.P. No. 1388 of 2011
.....

Dated this the 7th day of October, 2015

ORDER

The revision petitioner is the accused in S.T. 104 of 2008 on the files of the Court of the Judicial Magistrate of First Class- III Thrissur. The revision petitioner was convicted under Section 5 read with Section 180 of the Motor Vehicles Act and sentenced thereunder to simple imprisonment for one month.

2. In the appeal filed against the said conviction and sentence, the appellate court confirmed the conviction and modified the sentence to a fine of ₹1000/- with a default clause for simple imprisonment for two weeks.

3. Heard both sides.

4. The prosecution case can be briefly stated as follows:-

The revision petitioner is the registered owner of a tempo bearing Reg. No. KL 8E - 9853 . The said vehicle was entrusted with Eldo, who is the accused in Crime No. 576/2007 of Mannuthy Police Station. The said Eldo drove the vehicle along Madakkathara-Mannuthy public road in a

rash and negligent manner and when it reached at a place called Kasumavin Moola, at 7.30 p.m. On 8-11-2007, it hit against PW3 a cyclist, causing grievous injuries on him (PW3).

5. Before the court below, PW1 to PW3 were examined and Exts. P1 to P9 were marked for the prosecution. DW1 to DW3 were examined for the revision petitioner.

6. PW1 is the head constable, who had given notice to the revision petitioner to produce the licence of the above said Eldo, who was allegedly driving vehicle No. KL 8E -9853 on 8-11-2008 at 7.30 p.m. PW2 was the Circle Inspector of Police, who conducted the investigation in Crime No. 576 of 2007 of Mannuthy Police Station. He also registered the present case.

7. The revision petitioner had a consistent case that the vehicle bearing Reg. No. KL 8E -9853 was driven, at the relevant time, by DW1, who was having a valid license to drive the vehicle and hence the revision petitioner cannot be found guilty under Section 5 read with Sec. 180 of the M.V.Act. PW3 was the injured in Crime No. 576 of 2007 of Mannuthy Police Station. PW3 stated that the vehicle was stopped after the incident and he could identify the person who had driven the vehicle at the

relevant time. He categorically stated that DW1 was not driving the vehicle at the relevant time. However, PW3 could not state about the probable age of the person who was driving the vehicle at the relevant time. Since the above said Eldo was not an accused in the present case, he was not present before the Court for identification by PW3. Eventhough PW3 stated that the vehicle was stopped after the incident, PW2 stated that it was a hit and run case.

8. Having gone through the evidence of PW2, I am not able to accept the evidence of PW3 that the vehicle was stopped after the incident and PW3 could see the driver of the vehicle. It is also to be noted that the FIR in Crime No. 576/2011 was registered on 22-11-2007, eventhough the incident was on 8-11-2007. No convincing material has been produced before the court to prove that the revision petitioner had entrusted the vehicle with any person having no valid driving licence to drive the vehicle as alleged by the prosecution. PW1 and PW2 admittedly did not see the incident. PW3 stated that he fell down immediately after the incident.

9. Having gone through the evidence of PW1 to PW3, I am of the view that the evidence of PW1 to PW3 is not sufficient to hold that the revision petitioner had entrusted the vehicle in

question with Eldo referred to above. The courts below convicted the revision petitioner relying on Ext. P3 kychit executed by the revision petitioner. Ext. P3 kychit would show that the vehicle involved in this case was received on kychit by the revision petitioner, as he was the owner of the vehicle. Even otherwise, it is not disputed that the revision petitioner is the owner of the vehicle involved in this case. Since the prosecution has failed to establish that the revision petitioner had entrusted the vehicle with a person having no license to drive the vehicle as alleged by the prosecution, the concurrent finding of conviction and sentence passed by the courts below cannot be sustained.

In the result, this revision petition stands allowed, setting aside the conviction and sentence passed by the courts below under Section 5 read with Section 180 of the M.V.Act and the revision petitioner is acquitted for the said offence. The bail bond of the revision petitioner stands cancelled and he is set at liberty.

**B. SUDHEENDRA KUMAR,
JUDGE.**

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