

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 1937

Crl.Rev.Pet.No. 802 of 2015 ()

AGAINST THE JUDGMENT IN CRLA 474/2006 of THE SESSIONS COURT -
III, THALASSERY DATED 30-10-2014

AGAINST THE JUDGMENT IN CC 141/2006 of J.M.F.C., TALIPARAMBA DATED
25-08-2006

REVISION PETITIONER/APPELLANT/ACCUSED:

S.MAJEED, S/O MOOSA, AGED 54 YEARS,
KURUMATHUR.P.O., KURUMATHUR AMSON DESOM,
TALIPARAMBA TALUK, KANNUR DISTRICT.

BY ADVS.SRI.V.A.SATHEESH
SRI.V.T.MADHAVANUNNI

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA REP. BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM
THROUGH STATION HOUSE OFFICER,
TALIPARAMBA POLICE STATION,
KANNUR DISTRICT.

R BY PUBLIC PROSECUTOR: SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 06-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.HARILAL, J.

Crl.R.P. No. 802 of 2015

Dated this the 6th day of July, 2015

ORDER

The revision petitioner is the 2nd accused in C.C.No.141/2006 on the files of the Judicial 1st Class Magistrate's Court, Thaliparamba, as well as the appellant in Crl.Appeal.No.474/2006 on the files of the Sessions Court, Thalassery. He was prosecuted for the offence punishable under Sec.380 read with Sec.34 of the IPC and found guilty under the said section and convicted thereunder. He was sentenced to undergo rigorous imprisonment for 8 months under Sec.380 read with Sec.34 IPC and to pay a fine of Rs.2,000/-. In default of payment of fine, he shall undergo simple imprisonment for 3 more months. Set off is also allowed under Sec.428 of the Code of Criminal Procedure. Aggrieved by the conviction and sentence, though he had preferred the above criminal appeal, after re-appreciating the entire

evidence on record, the learned Sessions Judge also concurred with the verdict of guilty and confirmed the judgment passed by the trial court. The legality and propriety of the concurrent findings of conviction and sentence are under challenge in this revision petition.

2. The prosecution case, in a nutshell, is that: On 15/01/2006 at about 9.45am, the accused Nos.1 and 2, in furtherance of their common intention, committed theft of a bag containing currency notes worth Rs.1,920/- and a telephone bill from the STD Booth run by PW2 in building No.TMC XIII-457 of Thaliparamba Municipality.

3. The accused pleaded not guilty and they were questioned under Sec.313(1)(b) of Cr.P.C and they denied the incriminating circumstances levelled against them. To prove the prosecution case, Pws 1 to 5 were examined and Exts.P1 to P7 were marked. PWs 1 and 3 are the attestors to Ext.P2 seizure mahazar and PW2 is the owner of the STD Booth, who has lodged Ext.P1 First

Information Statement.

4. Heard the learned counsel for the petitioner. The learned counsel for the petitioner advanced arguments challenging the concurrent findings of conviction and sentence. The sum and substance of the arguments advanced by the learned counsel for the petitioner is that the court below concurrently went wrong by not appreciating the facts in its correct perspective. According to the learned counsel, the court below ought not have accepted the version of prosecution witnesses in order to convict the accused.

5. The scope and extent of jurisdiction and power of the revisional court is very limited and confined to examination of legality, propriety and correctness of the findings of the court below. This court is not inclined to re-appreciate the entire facts and evidence once again, unless it is shown that the findings of the court below are tainted with perversity.

6. Going by the findings of the court below, it is seen that PW2 is the de facto complainant, who has given Ext.P1 First Information Statement to the police immediately after the alleged commission of the offence from his STD Booth. According to him, on 15.1.2006 at about 9.45 am, A1 and A2 entered into his STD booth and taken away the bag which was kept in the cabin of his table and the said bag contained an amount of Rs.1,920/- and a telephone bill and bank passbook. Immediately after the commission of the offence, the stolen articles were seized from the custody of the accused and he failed to account the possession of the same in his hand. The stolen articles which were seized from the possession of the accused were marked as MO1 bag and Ext.P3 telephone bill. The seizure mahazar stands proved by the examination of PWs 1 and 3. They supported the prosecution story. PW1 would further say that he has

seen the seizure of the currency note from the accused. He admitted his signature in Ext.P1 seizure mahazar. PW3 is another witness in Ext.P1 seizure mahazar. He also deposed that he had seen the accused in the place where he was caught hold of by the police. Though Pws 1 to 5 were subjected to cross-examination, at length and width, nothing was brought out to discredit their version. Thus, I find that the court below has appreciated the evidence of PWs 1 to 3 in its correct perspective and there is no illegality or impropriety in the findings; whereby the court below found the accused guilty of the offence for which they were charge sheeted.

7. Coming to the question of sentence, though the trial court sentenced the petitioner/accused to undergo rigorous imprisonment for 8 months, the appellate court reduced the same to 5 months. The learned counsel for the petitioner further submits that the substantive sentence imposed on the revision petitioner is

disproportionate with the nature and gravity of the offence.

8. The prison term is inevitable to secure the interest of justice but difference does not necessarily depend upon the length of the term that the offender spends behind the bars. An unduly long term of substantive sentence would also be a counter productive as that may unnecessarily expose the offender to deleterious atmosphere of a prison.

9. In this view of the matter, I find that the prison term is a little excessive, the substantive sentence of rigorous imprisonment for 5 months will stand reduced and modified to simple imprisonment for three months. Therefore, in modification of the modified sentence imposed by the appellate court, the petitioner/2nd accused will stand sentenced to undergo simple imprisonment for 3 months and to pay a fine of Rs.3,000/- under Sec.380 read with Sec.34 IPC and in default to

undergo simple imprisonment for 2 more months. Set off is also allowed under Sec.428 Cr.P.C.

This revision is allowed in part.

Sd/-
K.HARILAL
JUDGE

rsr