

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

Crl.Rev.Pet.No. 916 of 2015 ()

AGAINST THE JUDGMENT IN CRA 145/2013 of III ADDL. SESSIONS
COURT, THODUPUZHA DATED 2-7-2015

AGAINST THE JUDGMENT IN CC 27/2010 of J.M.F.C-I, PEERUMEDU
DATED 31-08-2013

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

THAJUDEEN @ RAJUKHAN
S/O.KUNJUMAIDEEN, PUTHENTHUNDU PURAYIDAM
PULLUMEDU KARA, PULLUMEDU BHAGAM, ANAVILASAM VILLAGE
IDUKKI DISTRICT.

BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY

RESPONDENT(S)/RESPONDENT/STATE COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM-682031
(CRIME NO.249/2009 OF PEERMADE POLICE STATION
IDUKKI DISTRICT.

BY PUBLIC PROSECUTOR SRI.R.GITESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 07-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Dated this the 7th day of September, 2015.

ORDER

The revision petitioner is the accused in C.C. No. 27 of 2010 on the files of the Court of the Judicial First Class Magistrate- I, Peermade. The trial Court sentenced the revision petitioner to rigorous imprisonment for two years and a fine of Rs. 5,000/- with a default clause for simple imprisonment for three months. In the appeal filed against the said conviction and sentence, the conviction has confirmed and the sentence was modified to rigorous imprisonment for one year and a fine of Rs. 5,000/- by the III Addl. Sessions Judge, Thodupuzha as per judgment dated 2-7-2015 in Crl.Appeal 145/2013. Aggrieved by the said

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conviction and sentence, this revision petition has been filed .

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

3. The prosecution allegation is that at about 6.30 p.m. on 30-11-2009, during the course of the inspection of vehicles by PW1 and the excise party at Bridge Junction, Upputhara, the Jeep of the revision petitioner was also inspected. They recovered bottles containing Indian made foreign liquor from the Jeep. PW1 was standing near to the revision petitioner who was the driver of the vehicle. The revision petitioner fisted on the chest of PW1 and pushed him down causing injuries on him. Thereafter, he took away the jeep from there and thereby deterred PW1 and Excise party from discharging their official duty.

4. Before the trial Court, PW1 to PW6 were examined and Exts. P1 to P6 were marked for the prosecution. No evidence was adduced for the defence.

5. PW1 was the Excise Range Officer who was on official duty along with other Excise officials on 30-11-2009. They were checking the vehicles at Bridge Junction, Upputhara. At about 6.30 p.m. PW1 signalled to stop the Jeep driven by the revision petitioner. Thereafter, PW1 stood near to the driver seat. PW2 and other Excise officials inspected the jeep and recovered a plastic cover containing bottles having Indian made foreign liquor. When they were about to inspect the plastic cover, the driver escaped in the jeep after fisting the chest of PW1 and pushing him down. PW2 was another Excise Guard who also accompanied PW1 on the date of incident for checking the vehicles. He also supported the evidence of PW1 in all material aspects. Both PW1 and PW2 identified the revision petitioner as the driver of the Jeep. PW3 is an independent witness who did not support the prosecution case. However, he admitted his signature in Ext. P2 seizure mahazar. PW6 is the doctor through

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whom Ext. P6 wound certificate was marked. The courts below relying the documentary as well the oral evidence adduced by the prosecution found that the revision petitioner committed offence under Sec. 326 IPC. Since there is concurrent findings on fact, this Court will not be justified in interfering with the same unless the finding is perverse or incorrect. No circumstance has been brought to the notice of this court to indicate that the appreciation of evidence was perverse or incorrect. In the said circumstances, I do not find any reason to interfere with the concurrent finding of the courts below that the revision petitioner committed offence under Section 332 of IPC.

6. The next question to be considered is the quantum of sentence to be awarded to the revision petitioner. It has been submitted by the learned counsel for the revision petitioner that the revision petitioner is an acute cardiac patient undergoing continuous treatment for his heart ailment and in the said

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circumstance, the learned counsel has pleaded for leniency in the matter of sentence. This court called for the report from the Probation Officer which would show that the revision petitioner is having good character and conduct. He belongs to a very poor family. It appears from the report of the Probation Officer that the revision petitioner has not involved in any other offence of similar in nature. The revision petitioner is presently 58 years of old.

7. Considering the facts and circumstances of the case, including the submission of the learned counsel for revision petitioner and also taking into consideration of the fact that the revision petitioner is not involved in any offence similar in nature, I am of the view that the sentence awarded by the courts below can be modified and reduced to the imprisonment already undergone by the revision petitioner and a fine of Rs. 10,000/- (Rupees ten thousand only) to secure the ends of justice and

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accordingly, I order so.

In the result, this revision petition stands allowed in part confirming the verdict of guilty and conviction passed by the courts below under Sec. 332 IPC. The sentence awarded by the trial court and modified by the lower appellate court stands further modified to imprisonment already undergone by the revision petitioner and a fine of Rs. 10,000/-. In default of payment of fine, the revision petitioner shall undergo simple imprisonment of three months. In the event of realisation fine, the amount of Rs. 5,000/- (Rupees five thousand only) shall be given to PW1 as compensation under Sec. 357 (1)(b) Cr.P.C.

B. SUDHEENDRA KUMAR,
JUDGE.

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