

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

Crl.Rev.Pet.No. 1132 of 2015 ()

CRA 425/2013 of I ADDL.SESIONS COURT, KOZHIKODE
CC 452/2004 of J.M.F.C.-V,KOZHIKODE
CRIME NO. 104/2004 OF NALLALAM POLICE STATION , KOZHIKODE

REVISION PETITIONER/APPELLANT/ACCUSED:

ASOKAN, S/O.SADASIVAN,
AGED 52 YEARS
THACHAMBALATH HOUSE
PANTHEERANKAVU, KOZHIKODE DISTRICT.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS/COMPLAINANT & STATE:

1. STATION HOUSE OFFICER
NALLAM POLICE STATION,
KOZHIKODE DISTRICT. 673 027.
2. STATE OF KERALA REP.BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM 682 031.

BY PUBLIC PROSECUTOR, SHRI.R GITHESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 11-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1132 of 2015

Dated this the 11th day of September 2015

O R D E R

The revision petitioner is the accused in C.C. No.452 of 2004 on the files of the Court of the Judicial Magistrate of First Class-V, Kozhikode.

2. The trial court convicted the revision petitioner under Sections 448 and 323 of the Indian penal Code (for short 'I.P.C.')

and sentenced him thereunder to simple imprisonment for three months and a fine of Rs.1,000/- under Section 448 I.P.C. and to simple imprisonment for three months and a fine of Rs.1,000/- under Section 323 of

I.P.C. In the appeal filed against the said conviction and sentence, the conviction and sentence passed by the trial court were confirmed. Aggrieved by the said conviction and sentence, the revision petitioner filed this revision petition.

3. Heard the learned counsel for the revision and the learned Public Prosecutor.

4. The prosecution allegation is that on 10.3.2004 at about 7.30 a.m., the revision petitioner trespassed into the house of PW1, caught hold of the neck of PW1 and destroyed the name board of PW2, flower pot etc., causing a loss to the tune of Rs.1,000/- to PW2.

5. Before the trial court, PW1 to PW11 were examined and Exts.P1 to P4 were marked for the

complainant. PW1 to PW5 and PW7 are the eye witnesses, who supported the prosecution case. PW4 and PW5 are independent witnesses, who also supported the prosecution case. PW9 was the doctor who examined PW1 and issued Ext.P3 wound certificate. The evidence of PW1 to PW5 and PW7 with regard to the occurrence is corroborated by the medical evidence of PW9 and Ext.P3 wound certificate.

6. The courts below, relying on the documentary as well as oral evidence adduced by the prosecution, concurrently found that the revision petitioner committed the offences under Sections 448 and 323 I.P.C. Since there is concurrent finding on facts by the courts below, this court will not be justified in interfering with the same unless the finding is perverse or incorrect. No

circumstance has been brought to my notice to indicate that the finding of the court below is perverse or incorrect. In the said circumstances, I do not find any reason to interfere with the verdict of guilty and conviction passed by the courts below under Sections 448 and 323 I.P.C.

7. As regards the sentence, the learned counsel for the revision petitioner has pleaded for leniency. The revision petitioner is aged 52 years. PW1 did not sustain any serious injury in the incident as per Ext.P3 wound certificate. The incident was during the year 2004. Considering the facts and circumstances of the case, including the nature of injuries sustained by PW1, I am inclined to modify and reduce the sentence to imprisonment till the rising of the court and a fine of

Rs.1,000/- under Section 448 I.P.C. and a fine of Rs.1,000/- under Section 323 I.P.C., to secure the ends of justice. Accordingly, I order so.

In the result, this revision petition stands allowed in part,

- (1) confirming the verdict of guilty and conviction passed by the courts below under Sections 448 and 323 I.P.C.
- (2) The sentence awarded by the courts below stands modified and reduced to imprisonment till the rising of the court and a fine of Rs.1,000/- and in default to simple imprisonment for one month under Section 448 I.P.C. and a fine of Rs.1,000/- and in default to simple imprisonment for one month under Section 323 I.P.C.

- (3) In the event of realisation of the fine amount, the entire amount shall be given to PW1 as compensation under Section 357(1)(b) Cr.P.C.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

dl

/ True copy /

PA to Judge