

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

Crl.Rev.Pet.No. 2399 of 2011 ()

AGAINST THE JUDGMENT IN CRL.A. 252/2008 of ADDL. SESSIONS
JUDGE, FAST TRACK COURT - I, THIRUVANANTHAPURAM, DATED
27-02-2010

AGAINST THE JUDGMENT IN CC 171/2002 of J.M.F.C.-
II, NEDUMANGAD DATED 28-02-2008

REVISION PETITIONER(S)/7TH ACCUSED:

SOMAN, S/O. TITUS, AYANIVILA PUTHEN VEEDU
CHOOLOVAICKAL, KILLY, KULATHUMAL VILLAGE.

BY ADVS. SRI. D. KISHORE
SMT. MINI GOPINATH

RESPONDENT(S)/COMPLAINANT:

1. STATE OF KERALA REPRESENTED BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM. 682 031.

2. THE SUB INSPECTOR OF POLICE
VATTIYOORKAVU POLICE STATION
THIRUVANANTHAPURAM DISTRICT 695 001.

BY PUBLIC PROSECUTOR SRI. V. S. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 04-11-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Crl.R.P. No. 2399 of 2011
.....

Dated this the 4th day of November, 2015

ORDER

The revision petitioner is the 7th accused in C.C. No. 171/2002 on the files of the Court of the Judicial Magistrate of First Class-II, Nedumangadu.

2. The trial Court convicted the revision petitioner under Section 411 IPC and sentenced him thereunder to rigorous imprisonment for one year. The appeal filed against the said conviction and sentence was dismissed. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. The prosecution allegation is that on 4-08-1999 at 2 a.m., accused Nos. 1 to 5 in the crime, in furtherance of their

common intention, committed theft of a Scooter bearing Reg. No. KL-01A/9917 belonging to PW1, which was parked in front of the house of PW1. Thereafter, accused Nos. 1 to 5 repainted the scooter and changed the registration number to KL-02/5936, which was a bogus number. Thereafter, the same was handed over to the 6th accused for sale, who in turn sold the same to the 7th accused. It is alleged that the 7th accused purchased the stolen property knowing the same to be a stolen property.

4. Before the trial Court, PW1 to PW14 were examined and Exts. P1 to P10 were marked for the prosecution. No evidence was adduced on the side of the revision petitioner.

5. PW1 is the owner of the Bajaj Scooter bearing Reg. No. KL-01A/9917 which was stolen on 4-8-1999. PW1 stated

that his Scooter was stolen from his house during the night of 4-08-1999. PW12 was the Sub Inspector of Kattakkada Police Station during the relevant period. On getting information that stolen scooter was kept in the house of the 7th accused, PW12 and the police party proceeded to the house of the revision petitioner. They reached the house at about 1 a.m. and recovered a Scooter bearing Registration No. KL-02-5936 from there. The 7th accused was also arrested from the said house. On questioning the 7th accused, the involvement of the other accused in the crime was revealed.

6. PW3 and PW4 are Police Constables, who supported the evidence of PW12 in all material aspects. PW5 was an attestor to Ext. P8 mahazar prepared by the police in connection with the seizure of the above said Scooter. However, PW5 did not support the prosecution case. PW6 is another independent

witness who also did not support the prosecution case with regard to the recovery of the Scooter from the house of the 7th accused. PW7 and PW8 also did not support the prosecution case.

7. The learned counsel for the revision petitioner has argued that apart from the evidence of PW12 regarding the seizure of the Scooter from a shed, there is no other evidence to connect the revision petitioner with the commission of offence and in the said circumstances, the revision petitioner is entitled to be granted benefit of doubt. It has been further argued by the learned counsel that all the other accused persons had been already acquitted by the trial Court and in the said circumstances, it has to be held that the prosecution failed to establish that the Scooter seized in this case is a stolen scooter and consequently, the revision petitioner is entitled to benefit of doubt.

8. In order to prove the offence under Section 411 IPC,

the ingredients to be proved are:- 1) the accused had received or retained the stolen property, 2) the accused received the stolen property knowing it to be stolen property or in the circumstances justifying the inference that he had every reason to believe that such article to be stolen property and 3) the accused must have acted dishonestly in receiving or retaining the stolen property.

9. The prosecution case is that the vehicle was given to A7 after changing its number. PW12 recovered the same as per Ext. P8 mahazar. PW12 stated that he noted the chassis number and Engine Number of the vehicle. However, he did not mention any such number in Ext. P8 mahazar. It is not discernible as to why he did not mention the engine number and the chassis number of the vehicle in Ext. P8 mahazar, eventhough PW12 had noted the said numbers. It is further in the evidence of PW12 that he

did not verify the Engine Number and Chassis Number with the numbers in the R.C. Book. PW12 further stated that he had seen the documents relating to the ownership of the land and the house in question. However, PW12 himself admitted that the said documents were not produced before the Court. It is not discernible as to why PW12 could not produce the documents pertaining to the ownership of the premises where the shed, from which the recovery of the vehicle was effected, was situated, eventhough he had occasion to see the documents. There is also no evidence before the Court with regard to the amount for which the revision petitioner purchased the vehicle. There is no material before the court to show that A7 had purchased the above mentioned Scooter at a very low price. There is also no material before the court to indicate that A7 had received the above said Scooter knowing it to be a stolen property. There is nothing in evidence to indicate that the revision petitioner acted

dishonestly in receiving and retaining the vehicle. Even though the Scooter was allegedly seized from the shed attached to a house by PW12, there is absolutely no material before the court with regard to the details of the inmates of the said house. There is also no material before the court to show that the shed and the said house were in exclusive possession of the revision petitioner. The other accused had been already acquitted by the trial Court as there was no evidence to connect them with the commission of the offence. It is true that there is evidence of PW1 to the effect that the above said Scooter belonged to PW1. However, there is no evidence or circumstance to show that the said Scooter was purchased by the revision petitioner knowing it to be stolen property or under the circumstance to justify an inference that the revision petitioner had every reason to believe that the said Scooter was stolen property. Thus, the evidence on record would show that the prosecution could not establish

beyond reasonable doubt that the revision petitioner was in possession of the seized Scooter. The prosecution also failed to establish that the revision petitioner had received the stolen Scooter knowing it to be stolen property. The courts below failed to appreciate the above said aspects before fastening culpability on the revision petitioner. In the absence of any evidence to indicate that the revision petitioner had received or retained the stolen property knowing it be be stolen property or in the circumstances justifying the inference that the revision petitioner had every reason to believe that the said Scooter to be stolen property, it has to be held that the prosecution failed to establish that the revision petitioner committed the offence under Sec. 411 IPC and consequently, the verdict of guilty, conviction and sentence passed by the courts below under Sec. 411 IPC cannot be sustained.

In the result, this Revision Petition stands allowed, setting aside the conviction and sentence passed by the courts below under Section 411 IPC and the revision petitioner is acquitted for the said offence. The bail bond of the revision petitioner stands cancelled and the revision petitioner is set at liberty.

Dated this the 4th day of November, 2015.

B. SUDHEENDRA KUMAR,
JUDGE.

Ani/6/11/2016