

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

Crl.Rev.Pet.No. 2076 of 2014

Crl.A 18/2011 of ADDL. SESSIONS COURT - IV, KOTTAYAM

C.C 441/2008 of J.M.F.C., ERATTUPETTA

REVISION PETITIONER(S)/ APPELLANT/ACCUSED:

CHERIAN

PONATTUPUTHENPURACKAL HOUSE, PERUMANGALAM KARA
NADUMBHAGOM VILLAGE

BY ADV. SRI.BABY THOMAS

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

STATE OF KERALA

REP BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM-682031

BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 04-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No. 2076 of 2014

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Dated this the 4th day of June, 2015

ORDER

The revision petitioner is the accused in C.C.No.441/2008 on the files of the Judicial First Class Magistrate's Court, Erattupetta as well as the appellant in Crl.A.No.18/2011 on the files of the IV Additional Sessions Judge, Kottayam. He was prosecuted for the offence punishable under Section 381 of the Indian Penal Code and after trial, he was convicted thereunder. He was sentenced to undergo simple imprisonment for three months and set off is also allowed. Aggrieved by the conviction and sentence, though he had preferred the above criminal appeal, after re-appreciating the evidence on record, the learned Sessions Judge also concurred with the verdict of guilt and confirmed the conviction and sentence as such. This revision petition is filed challenging the legality and

propriety of the concurrent findings of conviction and sentence.

2. The prosecution case, in brief, is that on 13.6.2008 at 12.30 noon the accused, who was a head load worker in the rubber cum hills produce shop of P.W.1 functioning in building bearing No.III/302 of Poonjar Thekkekara Grama Panchayat at Peringalam on the northern side of Poonjar-Adivaram road, committed theft of scrap rubber weighing 24 Kgs. worth Rs.2,000/-, 54 Kg rubber sheets worth Rs.7200/- and 98 Kg pepper worth Rs.13,700/- from the shop while P.W.1 was not available in the shop. Thus he has committed the offence punishable under Section 381 of the IPC.

3. To prove the prosecution case P.Ws. 1 to 7 were examined and Exts.P1 to P7 and M.Os. 1 to 3 were marked. The accused pleaded not guilty. But, no evidence had been adduced in defence. In statement under 313, he had denied all the incriminating circumstances brought out in evidence

against him. The learned counsel for the petitioner submits that the court below miserably failed to appreciate the facts and evidence in its correct perspective. According to the learned counsel, the evidence of PW1 is not sufficient to base conviction for the offence under Section 381 IPC. So also, there is no legally sustainable recovery of material objects. The material witnesses were not examined by the prosecution to prove the guilt of the accused. The court below ought to have taken into consideration the antecedents of the accused before awarding sentence. He had never been involved in any other offence. So, the sentence imposed on the revision petitioner is disproportionate with the nature and gravity of the offence.

4. Per contra, the learned Public Prosecutor advanced arguments to justify the concurrent findings of conviction and sentence. Similarly, the sentence imposed on the revision petitioner is just and proper and no interference is called for.

5. The short question that arises for consideration is, whether there is any illegality or impropriety in the impugned judgment under challenge. The scope and extent of jurisdiction and Power under 397 and 401 of the Code of Criminal Procedure is very limited and confined to examination of legality, propriety and correctness of the findings of the courts below. The evidence cannot be re-appreciated unless it is found that the appreciation of evidence is tainted with perversity.

6. With the above, I have meticulously examined the impugned judgments rendered by the Trial Court and the Appellate Court. Going by the judgment, it is seen that the theft charged against the accused stands proved by the evidence of PWs.1 and 7, the Investigating Officer, who recovered the material objects under Ext.P5 recovery mahasar. The evidence of PWs.1 and 7 coupled with the evidence of recovery of M.O.1 to M.O.3. I do not find any perversity in the appreciation of evidence of PWs.1 and 7.

So also, recovery under Section 27 of the Indian Evidence Act stands devoid of any kind of illegality. There is no illegality or impropriety in the concurrent findings of conviction. Therefore, conviction will stand confirmed.

7. Coming to the legality and proportionality of the sentence, it is seen that the petitioner had never been involved in any other offence and he had been employed under PW1 for the last 15 years as a servant. Now he is aged more than 55 years. Even though, prison term is inevitable to secure the interest of deterrence, in view of the facts and circumstances of the case, I find that deterrence in a case like this does not necessarily depend upon the length of the term that the offender spends behind the bar. In that view of the matter, I find that the period which he had undergone imprisonment in the pre-trial is sufficient to meet the interest of justice. Provided that, the petitioner shall deposit an amount of ₹15,000/- in the trial court within a period of two months from today payable as

compensation to PW1.

8. In the result, In supersession of the modified sentence imposed by the trial court, the revision petitioner will stand sentenced to undergo simple imprisonment for the period in which he had already undergone pre-trial imprisonment and to deposit ₹15,000/- as compensation to PW1, within a period of two months from today and the same shall be given to PW1 as compensation under Section 357(3) of the Cr.P.C. In case of default, the petitioner shall undergo simple imprisonment for two months.

The revision petition is disposed of.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge