IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

FRIDAY, THE 11TH DAY OF APRIL 2025 / 21ST CHAITHRA, 1947

CRL.REV.PET NO. 375 OF 2015

JUDGMENT DATED 31.10.2013 IN Crl.A NO.715 OF 2010 OF III ADDITIONAL DISTRICT COURT, PALAKKAD / II ADDITIONAL MACT, PALAKKAD

JUDGMENT DATED 23.11.2010 IN CC NO.12 OF 2008 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II,PALAKKAD

REVISION PETITIONER/APPELLANT/ACCUSED:

CHANDRAN
AGED 54 YEARS
S/O.THEVAN, MANAMKULAM VEEDU, MANKURUSSI, PALAKKAD

BY ADVS.
SRI.C.A.CHACKO
SMT.C.M.CHARISMA

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

SMT SEETHA S, SR PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR FINAL HEARING ON 11.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner is the accused in CC No.12/2008 on the files of the Judicial First Class Magistrate Court II, Palakkad. He was convicted and sentenced by the learned Magistrate for the commission of offence under Sections 451 and 323 IPC. The punishment awarded under Section 451 IPC was Rigorous Imprisonment for six months and to pay fine of Rs.2000/-, and that under Section 323 IPC was Rigorous Imprisonment for six months. A default clause of Simple Imprisonment for one month was also provided for non-payment of fine. Though the petitioner took up the matter in appeal before the Sessions Court, Palakkad, the learned Sessions Judge declined to interfere with the findings of the learned Magistrate. Accordingly, the above Criminal Appeal was dismissed by the learned Sessions Judge on 31.10.2013. It is aggrieved by the above dismissal of Crl.Appeal No.715/2010 by the learned Sessions Court, Palakkad, that the present revision is filed.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State of Kerala.

3. The prosecution case is that on 7.12.2007 at about 5 am, the accused criminally trespassed into the house of the de facto complainant

and attempted to outrage her modesty, and also slapped on her face, causing injuries. Though the Final Report was filed in respect of the offences under Sections 451, 323 and 354 IPC, the Trial Court found that the offence under Section 354 IPC is not attracted. It is seen from the records that the Trial Court relied on the testimonies of PW1 and PW3 in arriving at the finding that the prosecution has succeeded in establishing the offences under Sections 451 and 323 IPC. The Appellate Court has also reappraised the evidence on record and concluded that there is no reason to interfere with the findings of the learned Magistrate. On going through the records of the case as well as the impugned judgment, I am of the view that there is no reason to interfere with the concurrent findings of the Trial Court and the Appellate Court in the above regard. In the absence of grave illegality or perverse appreciation of evidence, it is not possible for the revisional court to interfere with the concurrent findings of fact by the courts below.

4. The proposition of law upon the scope of interference in revision, is well settled by a catena of decisions of the Hon'ble Supreme Court.

5. In ***State of Kerala v. Jathadevan Namboodiri : AIR***

1999 SC 981, the Hon'ble Supreme Court held as follows:

> *Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as Sessions Judge in appeal unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.*

6. In ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke & Anr : 2015 (3) SCC 123***, it has been held by the Hon'ble Supreme Court as follows:

> *Revisional power of the court under Sections 397 to 401 of Cr.PC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction*.

7. Referring the above dictums, the Apex Court has observed in ***Kishan Rao v. Shankargouda : 2018 (8) SCC 165*** as follows:

> *Another judgment which has also been referred to and relied by the High Court is the judgment of this Court in Sanjaysinh Ramrao Chavan vs. Dattatray Gulabrao Phalke and others, 2015 (3) SCC 123. This Court held that the High Court in exercise of revisional jurisdiction shall not interfere with the order of the Magistrate unless it is perverse or wholly*

unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. Following has been laid down in paragraph 14:

> *"14.....Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction."*

8. As far as the present case is concerned, none of the parameters dealt with by the Apex Court in the aforesaid decisions, which would warrant interference with the concurrent findings of the Trial Court and Appellate Court, in revision, are attracted in the facts and circumstances.

9. As regards the sentence awarded, it appears that the Rigorous Imprisonment for six months awarded under Section 451 IPC and Rigorous Imprisonment for six months under Section 323 IPC, is somewhat excessive considering the gravity of the offence alleged in this case. It is also seen that the parties are related to each other, and that the crime was the outcome of a private dispute between them. Taking into account the above facts and circumstances of the case as well as the time lag of more than 17 years from the date of commission of the offence, I deem it appropriate to modify the sentence awarded by the courts below to imprisonment till the rising of the court, coupled with a direction to pay compensation of Rs.25000/- to PW1.

In the result, the revision stands allowed in part as follows:

(i). The concurrent findings of the Trial Court and the Appellate Court, convicting the petitioner for the commission of offences under Sections 451 and 323 IPC, are hereby confirmed.

(ii). In supersession of the sentence awarded by the courts below, the petitioner is sentenced to undergo imprisonment for one day, till the rising of the court, and to pay compensation of Rs.25000/- (Rupees Twenty Five Thousand Only) under Section 357(3)Cr.P.C, to PW1. In default of payment of compensation as

directed above, the petitioner will undergo Simple Imprisonment for a term of three months.

(iii). The petitioner shall appear before the Trial Court within a period of 30 days from today to undergo the sentence awarded by this Court, and to make payment of compensation as directed above.

The registry shall transmit a copy of this order, along with the case records to the learned Magistrate.

Sd/-

G.GIRISH
JUDGE

IAP