

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 28TH SEPTEMBER 2006 / 6TH ASWINA 1928

Crl.Rev.Pet.No. 509 of 1999()

CRA.356/1998 of ADDL.SESIONS COURT, KOZHIKODE
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REVN. PETITIONER:

ABDUL RAHIM, CONVICT NO.5208, CENTRAL
PRISON, KANNUR (ABDUL RAHIM @ABDURAHIM,
S/O. MUHAMMEDKOYA)

BY ADV. SRI.S.D.ASOKAN(STATE BRIEF)

RESPONDENTS:

STATE OF KERALA.

BY PUBLIC PROSECUTOR SHRI K.G. BHASKARAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 28.9.2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K. PADMANABHAN NAIR, J.

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Dated this the 28th day of September, 2006

ORDER

The accused in C.C. No.39 of 1995 on the file of the Chief Judicial Magistrate, Kozhikode is the Revision Petitioner. The revision petitioner was found guilty of the offence punishable under Sections 457 and 380 IPC, convicted and sentenced to undergo Rigorous Imprisonment for one year each under Sections 457 and 380 IPC. The sentences were directed to run concurrently. The Criminal Appeal filed by the revision petitioner challenging the conviction and sentence was also dismissed. Hence this Criminal Revision Petition.

2. The short facts necessary for the disposal of the case is as follows: P.W. 1 is the owner of a shop. He is engaged in the manufacture and selling of sweets (Halva). For manufacturing the sweets he was using a big vessel made up of copper. On 17.3.1995 he closed the shop at about 6.00 p.m. after keeping M.O.1, the copper vessel inside the shop. At 6.00 a.m. on the next day when he came to the shop he saw the front door of the shop lying open. On examination

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it was found that the lock of the door was forcibly opened. According to the prosecution between 6.00 p.m. on 17.3.1995 and 6.00 a.m. on 18.3.1995 the revision petitioner criminally trespassed into the shop room after breaking open the front door and committed theft of M.O.1 copper vessel kept inside the shop. At or about 6.30 p.m. on 18.3.1995 the revision petitioner was walking along the side of the road with M.O.1 copper vessel on his head. At that time P.W. 3, Circle Inspector of Police of Nadakkavu Police Station and party came there in a jeep. On seeing the police, the revision petitioner made an attempt to run away. He was intercepted and questioned. He was unable to give any satisfactory explanation regarding the copper vessel. So, on reasonable suspicion that the same was a stolen article, petitioner was arrested. The copper vessel was seized under Exhibit P2 mahazar. He was taken to the police station and Crime No.67 of 1995 of Nadakkavu Police Station, was registered. On getting information of the seizure of the vessel, P.W.1, owner of the shop, came to the police station and identified the copper vessel. Since the shop was under the jurisdiction of Kasba Police Station, the FIR registered in the case by the Nadakkavu Police Station was transferred to the Kasba Police Station.

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The Head Constable on duty of the Kasba Police Station registered a case as Crime No.75 of 1995 of the Kasba Police Station. Further investigation was conducted and after the same was over, final report was filed.

3. The revision petitioner was produced before the learned Magistrate and released on bail. But at the time of trial he submitted his inability to engage a counsel of his choice. So Shri P.T. Rajesh, Advocate, was appointed as the counsel of the petitioner to defend the case. When the accused appeared before the learned Magistrate, copies of the relevant documents were furnished to the accused. Charges under Sections 457 and 380 IPC were framed against the accused. The charges were read over and explained to him. He understood the same and pleaded not guilty.

4. On the side of the prosecution P.Ws.1 to 9 were examined. Exhibits P1 to P6 were proved and marked. M.Os.1 to 3 were identified. After the prosecution evidence was over, the accused was questioned under Section 313 Cr.P.C. He denied all the allegations levelled against him. The learned Magistrate after appreciating the evidence adduced by the prosecution found the revision petitioner

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guilty of the offences charged, convicted and sentenced him as aforesaid. In the meanwhile, the revision petitioner was remanded to custody.

5. Revision petitioner filed Crl. Appeal No.356 of 1998 challenging the conviction and sentence imposed on him before the Sessions Court, Kozhikode. The learned Sessions Judge concurred with the findings of the learned Magistrate and dismissed the appeal. Challenging those conviction and sentence, this Crl. R.P. is filed.

6. Revision Petitioner did not engage a counsel of his choice. Accordingly Shri S.D. Asokan was appointed as the state brief. Revision Petitioner is under custody from 1996 onwards. It is submitted that the petitioner had already suffered the sentence and as such no useful purpose will be served in disposing of the revision on merits. The fact that the revision petitioner had already undergone the sentence is not a ground to dismiss the revision petition as infructuous. So the case is considered and disposed of on merits.

7. It is true that P.W.1 has not filed any first information statement. The theft took place during the night of 17.3.1995. P.W1, the owner of the shop admitted that at about 6 a.m. on the next day he

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came to the shop and found that the front door of the shop lying open. The copper vessel which was used for the manufacture of sweets was found missing. On that day itself at about 6.30 p.m. the accused was arrested. On getting information about the arrest, P.W.1 went to the police station and identified the copper vessel. The accused did not adduce any evidence to show that M.O.1 copper vessel belongs to him. The evidence on record shows that the lock of the front door of the shop owned by P.W.1 was forcibly opened. M.O.2 is one of such locks. M.O. 3 is the iron bar which was used for forcibly opening the front door of the shop. The evidence on record shows that the front door of the shop of P.W.1 was forcibly opened and the copper vessel kept inside the shop was stolen. P.W.1 identified the copper vessel and he deposed that the same was stolen from his shop. He identified M.O.1 as the vessel stolen from his shop. The evidence of P.W.3 shows that he arrested the revision petitioner with M.O.1 copper vessel. It is true that the independent witness examined to prove the arrest and seizure turned hostile. He is an attester to the seizure mahazar also. I do not find any reason to disbelieve the evidence of P.W.3. The evidence on record shows that the revision petitioner was arrested at 6.30 p.m. on

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18.3.1995 with M.O.1 copper vessel which was stolen from the shop of P.W.1 on the previous night. Both the courts below concurrently found that it was the revision petitioner who committed the theft of the copper vessel. This is a finding of fact based on evidence. I do not find any ground to interfere with the finding of fact and the same is only to be confirmed. There is no merit in the Crl. R.P. and the same is only to be dismissed.

In the result, the Criminal Revision Petition is dismissed.

K. PADMANABHAN NAIR, JUDGE.

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K. PADMANABHAN NAIR, J.

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28TH SEPTEMBER, 2006