

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 31ST DAY OF OCTOBER 2019 / 9TH KARTHIKA, 1941

Cr1.Rev.Pet.No.1133 OF 2019

AGAINST THE ORDER IN SC 66/2018 DATED 16-08-2019 OF ADDITIONAL  
DISTRICT & SESSIONS COURT (FOR THE TRIAL OF CASES RELATING TO  
ATROCITIES & SEXUAL VIOLENCE AGAINST WOMEN AND CHILDREN)

CRIME NO.1133/2016 OF KOTHAMANGALAM POLICE STATION, ERNAKULAM

REVISION PETITIONERS/ACCUSED NOS.1& 2:

1        P.C.SEBASTIAN  
          HOUSE NO.36/2272, MANAKKAPADY LANE, AZAD ROAD,  
          KALOOR, ERNAKULAM

2        M.K.M JAFFER  
          SUBIN APARTMENT, CONVENT JUNCTION, ERNAKULAM

BY ADVS.  
SHRI.M.THAHA  
MOHAMMAD SALAHUDEEN

RESPONDENT/RESPONDENT:

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

SRI.SAIGI JACOB PALATTY, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON  
31.10.2019, ALONG WITH Cr1.Rev.Pet.1123/2019, THE COURT ON THE  
SAME DAY PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 31ST DAY OF OCTOBER 2019 / 9TH KARTHIKA, 1941

Crl.Rev.Pet.No.1123 OF 2019

AGAINST THE ORDER IN SC 66/2018 DATED 16-08-2019 OF ADDITIONAL  
DISTRICT & SESSIONS COURT (FOR THE TRIAL OF CASES RELATING TO  
ATROCITIES & SEXUAL VIOLENCE AGAINST WOMEN AND CHILDREN)

CRIME NO.1133/2016 OF Kothamangalam Police Station , Ernakulam

REVISION PETITIONER/3RD ACCUSED:

N.SUBAIR  
S/O.ALIYAR, NADUKUDIYIL HOUSE, NELLIKUZHY KARA,  
ERAMALLOOR VILLAGE, KOTHAMANGALAM.

BY ADVS.  
SHRI.M.THAHA  
SRI.MOHAMMED SALAHUDEEN

RESPONDENT/RESPONDENT:

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

SRI.SAIGI JACOB PALATTY, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD  
ON 31.10.2019, ALONG WITH Crl.Rev.Pet.1133/2019, THE COURT ON  
THE SAME DAY PASSED THE FOLLOWING:

**ALEXANDER THOMAS, J.**

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**Crl.R.P Nos.1133 & 1123 of 2019**

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Dated this the 31<sup>st</sup> day of October, 2019

**ORDER**

As these two revision petitions are filed by the accused persons in the same sessions case and as a challenge is directed as against the same impugned judgment, these matters are disposed of on the basis of this common order. The two petitioners in Crl.R.P.No.1133/2019 and the sole petitioner in Crl.R.P.No.1123/2019 are accused Nos.1 to 3 respectively among the three accused in the instant sessions case S.C.No.66/2018 on the file of the court of the Additional Sessions Judge notified to deal with POCSO cases, Ernakulam. The said sessions case has in turn arisen out of the final report/charge sheet filed by the police in the instant Crime No.1133/2016 of Kothamangalam Police Station, which was registered for offences punishable under Sec.228 of the Indian Penal Code and Sec.23(1)(2) of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

2. The brief of the prosecution case is that the petitioners/accused persons had published a news in Madhyamam daily dated 28.05.2016 with respect to a crime in which a father had allegedly sexually abused his two minor daughters. The petitioners herein/accused persons are employees/staffs of the Madhyamam daily, Kothamangalam and they along with other reporters of other dailies such as Mathrubhoomi, Mangalam, Kerala Kaumudi, etc. received information about such a news from the local police. That the photograph of the alleged perpetrator was also supplied to the media personnel and the said news along with the photograph of the perpetrator was sent to the Madhyamam daily and the same was published in the said daily on 28.05.2016.

3. The further case of the petitioners is that other dailies have also published the same views with the photograph of the same alleged perpetrator on 28.05.2016. That however, the police has registered the instant Crime No.1133/2016 of Kothamangalam Police Station only as against the petitioners herein, who are the journalists-employees of the said daily. According to the petitioners, they never had any intention whatsoever even to remotely violate the mandate of Sec.23(2) of the Protection of Children from Sexual Offences (POCSO) Act and they never

thought that the identity of the victims should thus be disclosed. But since such a mistake had happened from their part, when the Special Court notified to deal with POCSO cases had read over the charge, the petitioners had pleaded guilty on the bonafide belief that the court would deal with the matter in a reasonable, fair and proportionate manner. That however, to their dismay, the Special Court concerned has now imposed a fine of Rs.1,00,000/- (Rupees One Lakh only) on each of the three petitioners, pursuant to the conviction imposed on the petitioners. The main contention of the petitioner is that the fine amount of Rs.1,00,000/- on each of the three petitioners is beyond the means of the petitioners. The petitioners then sought time to remit the fine amount, as they were given to understand that the said fine amount is not remitted at once, they would be put to jail. In that compelling circumstances, the petitioners had loan from various sources and had immediately remitted the fine amount before the said court, in order to avoid execution of the default sentence of three months. The petitioners would contend that the order of the Sessions Court imposing such a hefty and heavy fine of Rs.1,00,000/- on each of these petitioners is highly objectionable, illegal, improper and against the principles of proportionality. It is on this basis, the petitioners would

contend that this Court may exercise its revisionary jurisdiction and may interfere with the said judgment. It is also pointed out that the mere fact that the accused persons have remitted the fine amount, will not take away their valuable rights to challenge the legality of the sentence. It is in the light of these averments and contentions that the petitioners have filed the instant revision petition under Sec.401 of the Cr.P.C. When these matters are come up for consideration on the previous occasion, this Court had queried to both the learned counsel appearing for the petitioners/accused and the learned Public Prosecutor to address this Court as to whether appeal under Sec.344 of the Cr.P.C is maintainable and whether the appeal against the judgments of conviction, on the basis of plea of guilty is not applicable in the instant case, in view of the exceptions carved out in clause (b) of Sec.375 of the Cr.P.C. This Court had queried to both sides, as if appeal under Sec.374 is maintainable as is stipulated in the exception carved out in Sec.375, clause (b) of the Cr.P.C, then entertaining of revision is barred as per the mandate contained in sub-section (4) of Sec.401 of the Cr.P.C. Both sides have been heard. Secs.374, 375 & 401 of the Cr.P.C provide as follows:

**“374. Appeals from convictions.** - (1) Any person convicted on a trial held by a High Court in its extraordinary criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years [has been passed against him or against any other person convicted at the same trial]; may appeal to the High Court.

(3) Save as otherwise provided in sub-section (2), any persons,-

- (a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or
- (b) sentenced under section 325, or
- (c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate, may appeal to the Court of Session.

**375. No appeal in certain cases when accused pleads guilty.** -

Notwithstanding anything contained in section 374, where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal. -

- (a) if the conviction is by a High Court; or
- (b) if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence.

**401. High Court's powers of revision.** - (1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.”

4. This Court in the judgment in ***State v. Gopinatha Pillai*** [1978 KLT 779] has held that the bar as per the operative portion of Sec.375 of the Cr.P.C for entertaining an appeal against conviction, where it is based on a plea of guilt, would apply only when there is genuine plea of guilty made freely and voluntarily and only then the bar under Sec.375 of the Cr.P.C would apply and that there may be instances where the facts averred or pleaded by the prosecution do not amount to an offence and pleading by the accused that he is guilty does not preclude him from filing an appeal against the conviction. That this is so because his plea may amount only to the admission of facts averred by the prosecution which, even if true, may not be sufficient to constitute an offence. This abovesaid



aspects based on the legal position settled by this Court in **Gopinatha Pillai's** case (supra) has also been referred to in the decision rendered by this Court in the case in **Sasi.T.K v. Sub Inspector of Police, Pathanamthitta and Others** [2015 (5) KHC 10]. From a reading of Secs.374 & 375, it is clear like the blue sky that the legislature has conceived that appellate remedy is provided by that provision, which deals with appeal from conviction. However, a bar is engrafted by the legislature Sec.375 in certain cases where the accused is guilty and it is mandated in Sec.375 that- Notwithstanding anything contained in Sec.374, where an accused has pleaded guilty and has been convicted on such plea, there shall be no appeal,-

- (a) if the conviction is by a High Court; or
- (b) if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence.

5. Therefore, in view of the provisions contained in Sec.375 of the Cr.P.C, where the judgment of conviction is on the basis of plea of guilty as conceived in Sec.375 of the Cr.P.C, then an appeal, which is otherwise maintainable as per Sec.374 is barred. But at the same time, the legislature

in its wisdom has also carved out the exception in Clause (b) of Sec.375 of the Cr.P.C to the extent that the said bar in entertaining appeal will not apply in a case, where what is sought to be challenged in the appeal is regarding the extent or the legality of the sentence, even if, the impugned judgment of conviction is on the basis of plea of guilty. So in the instant case, the petitioners do not have any quarrel with their plea of guilty and the consequential conviction rendered as against them. Their only dispute is regarding the extent and legality of the sentence relating to the quantum of the fine amount and that it is highly disproportionate and unreasonable. Therefore, the petitioners have the vested right to challenge the sentence as illegal or improper, etc. by filing an appeal in terms of Sec.374. Since appellate remedy is so available in view of the provisions contained in Sec.374 read with Clause (b) of Sec.375, the bar under sub-section 4 of Sec.401 of the Cr.P.C would apply. However, the Parliament has also provided as per sub-section 5 of Sec.401 of the Cr.P.C that in a case where appeal lies as per the Code, but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto, then the High Court is vested the discretion to treat the application

for revision as a petition of appeal and deal with the same accordingly, if in its discretion, the High Court is of the considered opinion that it is so necessary in the interest of justice to do so. So that is a discretion conferred as per sub-section (5) of Sec.401 and the said statutory discretion conferred on the High Court as per sub-section (5) of Sec.401 of the Cr.P.C has to be exercised taking into account the facts and circumstances of each case. In the instant case, the impugned judgment of conviction and sentence imposing the fine has been rendered as early as on 16.08.2019. The petitioners have already suffered the imprisonment till the rising of the court and have already remitted the fine amount some time ago. Of course, mere suffering of the sentence of imprisonment till the rising of the court and the remitting of the fine by itself will not in any manner take away the precious appellate right of an accused to challenge the same by invoking the statutory remedy, as aforestated. But as of now, it cannot be said that there is any extraordinary urgency in the matter, so as to avoid any sentence, etc., which warrants the conversion and registration of this revision as an appeal by this Court by taking recourse to the discretion conferred as per Sec.401(5) of the Cr.P.C. Since that is the position, in this Court's opinion it may not be right and proper to exercise the said

discretion passed as per Sec.401(5) of the Cr.P.C in the facts and circumstances of the case, as the petitioners could invoke the appellate remedy.

6. The learned counsel for the petitioners would point out that the present revision petitions have been filed without delay based on the issuance of the certified copy of the impugned judgments as made available in this memorandum of revisions and that in case, this Court is not inclined to treat these revision petitions as appeal, then this Court may make it clear that the benefit of time exclusion as envisaged in Sec.470 of the Cr.P.C and on the basis of the principles importable from provisions as in Sec.14 of the Limitation Act, could be claimed by the petitioners, when they file their appeals. This Court need not now concern itself with that aspect of the matter and it is for the petitioners to invoke the remedy to file their appeal and in that process, if there is delay in filing the said appeal, it is open to them to urge all grounds available to them both on facts and law, for getting the delay condoned, including their convention based on exclusion of time as envisaged in Sec.470 of the Cr.P.C, etc. and such other grounds.

7. Accordingly, this Court is of the considered view that the present revision petitions need not be entertained in view of the bar

contained in Sec.401(4) of the Cr.P.C. However, liberty is accorded to the petitioners to invoke their appellate remedy, in the manner known to law. On the basis of the request of the parties, it is further ordered that the Registry will return back the certified copies of the impugned judgments in these cases and the certified copies of Annexure-A FIR, etc., if request in that regard is made. However, the Registry will ensure that photocopies of the said documents are placed in these respective original case files, for the purpose of maintenance of records.

With these observations and directions and with the said liberty, the above Criminal Revision Petitions will stand disposed of.

**Sd/-**

**ALEXANDER THOMAS  
JUDGE**

vgd

**APPENDIX OF Crl.Rev.Pet 1133/2019**

**PETITIONER'S/S EXHIBITS:**

ANNEXURE A	CERTIFIED COPY OF FIR IN CRIME NO.1133/2016 OF KOTHAMANGALAM POLICE STATION DATED 1.6.2016
ANNEXURE B	TRUE COPIES OF THE NEWS ITEM SERIES PUBLISHED IN MATHRUBHOOMI, MANGALAM AND KERALA KOUMUDI DTD 28.5.2016
ANNEXURE C	CERTIFIED COPY OF THE JUDGMENT DATED 16.8.2019 OF THE COURT OF ADDITIONAL DISTRICT AND SESSIONS JUDGE, ERNAKULAM
ANNEXURE D	TRUE COPIES OF THE COPY OF THE RECEIPTS SERIES ISSUED BY THE COURT OF ADDITIONAL DISTRICT AND SESSIONS JUDGE, ERNAKULAM

**APPENDIX OF Crl.Rev.Pet 1123/2019**

**PETITIONER'S/S EXHIBITS:**

ANNEXURE A	CERTIFIED COPY OF FIR IN CRIME NO.1133/2016 OF KOTHAMANGALAM POLICE STATION DATED 1.6.2016
ANNEXURE B	TRUE COPIES OF THE NEWS ITEM SERIES PUBLISHED IN MATHRU BHOOMI MANGALAM AND KERALA KOUMUDI DTD.28.5.2016
ANNEXURE C	CERTIFIED COPY OF THE JUDGMENT DATED 16.08.2019 OF THE COURT OF ADDITIONAL DISTRICT AND SESSIONS JUDGE, ERNAKULAM
ANNEXURE D	TRUE COPIES OF THE COPY OF THE RECEIPTS SERIES ISSUED BY THE COURT OF ADDITIONAL DISTRICT AND SESSIONS JUDGE, ERNAKULAM