

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.ANIL KUMAR

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2020 / 8TH ASWINA, 1942

Cr1.Rev.Pet.No.3369 OF 2007

AGAINST THE JUDGMENT IN CRA 89/2003 DATED 13-07-2007 OF ADDITIONAL  
SESSIONS COURT (ADHOC) I, KASARAGOD

AGAINST THE JUDGMENT IN CC 682/1999 DATED 31-01-2003 OF JUDICIAL  
MAGISTRATE OF FIRST CLASS, KASARAGOD

REVISION PETITIONER/APPELLANT/ACCUSED:

M.MOIDEEN @ NSL MOIDU  
AGED 42 YEARS, S/O ABBAS MUSLIYAR, BALANADUKKAN,,  
NEKRAJE VILLAGE, KASARAGOD TALUK,  
RESIDING AT SPORAMBAIL HOUSE, P.O.EDNAD,  
EDNAD VILLAGE, KASARAGOD TALUK.

BY ADV. SRI.M.RAMESH CHANDER (SR.)

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

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

SR.PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON  
28-09-2020, THE COURT ON 30-09-2020 PASSED THE FOLLOWING:

**ORDER**

**Dated this the 30<sup>th</sup> day of September 2020**

The revision petitioner was the accused in C.C.No.682 of 1999 on the file of the court of the Judicial First Class Magistrate, Kasaragod and the appellant in Crl.Appeal No.89 of 2003 on the file of the court of the Additional Sessions Judge (Adhoc) I, Kasaragod. The offence alleged against the revision petitioner arose in Crime No.112 of 1999 of Adhur Police Station under Section 379 of the Indian Penal Code (hereinafter referred to as 'IPC'). By the judgment dated 31.1.2003, the learned Magistrate convicted and sentenced the accused to undergo simple imprisonment for one year for the offence under Section 379 of IPC. Challenging the conviction and sentence, the revision petitioner preferred Crl.Appeal No.89 of 2003 before the Sessions Court, Kasaragod. By the judgment dated 13.7.2007, the learned Additional Sessions Judge (Adhoc) I, Kasaragod to

whom the case was made over, dismissed the appeal confirming the conviction and sentence imposed by the trial court.

2. PW1, the S.I. of Police, Badiadka Police Station, arrested the accused on 6.7.1999, at about 2.30 a.m. in connection with Crime Nos.102 of 1999, 107 of 1999 and 108 of 1999 of Badiadka Police Station. On being questioned, the accused confessed that he had committed theft of 30 chairs from a house at Povval. The chairs were later recovered at the instance of the accused. Seizure mahazar was prepared and FIR was registered against the accused.

3. Since the place of occurrence was within Adhur Police Station, the FIR was transferred to the said Station. Further investigation was carried out by PW2, the then S.I. of Police attached to Adhur Police Station. After completing the investigation, final report was filed against the accused for the offence under Section 379 of the IPC.

4. The learned Magistrate took cognizance of the

offence under Section 379 of the IPC and issued summons to the accused. On appearance of the accused, after having heard both sides, charge under Section 379 of the IPC was framed. The charge was read over to the accused to which he pleaded not guilty.

5. During the trial of the case, PWs 1 to 5 were examined and marked Exhibits P1 to P4 on the prosecution side. The accused was questioned under Section 313 of the Code of Criminal Procedure. He denied all the incriminating circumstances. When the case came up for defence evidence, no evidence was adduced for the accused.

6. It is the specific case of the prosecution that the accused had stolen 30 chairs owned by PW3 from the premises of the house of PW4. PW4 placed the above 30 chairs outside his house in connection with a marriage at his residence. He stated that the aforesaid chairs were found missing from his house during the previous night of the wedding day. PW3 did

not produce any evidence to prove the ownership of the chairs alleged to have been stolen. PW4 stated that he identified those chairs when the chairs were shown to him at the Police Station during the investigation. Later, he released the chairs on interim custody. The chairs were not produced back before the court as material objects for the prosecution. PW4 stated that he lodged a complaint before the Adhur Police Station subsequent to the theft at his residence. PW2, the S.I. of Police, Adhur Police Station, stated that he did not receive any complaint from PW3.

7. The prosecution mainly relied on the evidence of PW1 to prove that the accused committed theft of the chairs relying on the statement recorded by PW1 as per Exhibit P3 confession statement. It is his case that the accused confessed in police custody that the chairs were kept at his residence and pursuant to the information, PW1 proceeded to the residence of the accused and recovered the chairs from the possession of the accused on the strength of Exhibit P3. The trial court convicted

and sentenced the accused based on the confession statement and the recovery of the chairs. In fact the chairs were not produced before the trial court. No identification was also done.

8. The recovery alone is not sufficient to prove that the accused committed an offence under Section 379 of the IPC. There is no evidence in this case to show that the accused with an intend to take dishonestly moved the said chairs to his residence. The trial court was convicted and sentenced the accused presumably for the reason that the accused was a habitual offender involved in several other theft cases as well. The conviction and sentence was confirmed by the appellate court in appeal. In the case on hand, the charge was that the accused committed theft of chairs out of the possession of the accused without the consent of PW2. There is complete absence of evidence to show that the chairs, which were said to be with the revision petitioner, were in the possession of PW3. No document was produced to prove the ownership. Chairs were not even identified during the trial.

9. The trial court as well as the appellate court erroneously appreciated the evidence and wrongfully convicted the accused. There was total absence of evidence against the accused. Hence the conviction and sentence imposed by the trial court and confirmed by the appellate court are liable to be set aside.

In the result, the revision is allowed. The conviction and sentence under Section 379 of the IPC are set aside. The accused is found not guilty for the offence punishable under Section 379 of IPC and he is acquitted thereunder. Cancelling his bail bonds, this Court directs that he be set at liberty. Pending applications, if any, stand disposed of.

Sd/-

**N.ANIL KUMAR  
JUDGE**

csl