

**Hashim vs the State**

**Hashim vs the State**

**SooperKanoon Citation :** [sooperkanoon.com/1290079](http://sooperkanoon.com/1290079)

**Court :** Kerala

**Decided On :** Jul-31-2024

**Judge :** Honourable Mrs. Justice M.B. Snehalatha

**Appeal No. :** Crl.Rev.Pet/1/2018

**Appellant :** Hashim

**Respondent :** The State

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA  
WEDNESDAY, THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946  
CRL.REV.PET NO. 1 OF 2018 CRIME NO.578/2008 OF Kannur Town,  
Kannur AGAINST THE JUDGMENT DATED 12.07.2017 IN CRL.A  
NO.547 OF 2009 OF ADDITIONAL DISTRICT COURT - II,  
THALASSERY ARISING OUT OF THE JUDGMENT DATED 03.11.2009  
IN CC NO.479 OF 2008 OF JUDICIAL MAGISTRATE OF FIRST CLASS  
-I, KANNUR REVISION PETITIONER/APPELLANT/ACCUSED: HASHIM  
S/O.MOOSA HAJI, AGED 57 YEARS, PANJABI ROAD, PALLIKUNNU  
AMSOM, PALLIKUNNU P.O.,KANNUR DISTRICT. BY ADVS.  
SRI.P.U.SHAILAJAN SMT.D.N.NISHANI SRI.M.SURESH KUMAR

SRI.V.SREEJITH      K13982000      SMT.VIDYA      KURIAKOSE  
RESPONDENT/RESPONDENT: THE STATE REPRESENTED BY  
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-  
682031 SRI.C.S.HRITHWIK -PUBLIC PROSECUTOR SMT.MAYA M.M -  
PUBLIC PROSECUTOR THIS CRIMINAL REVISION PETITION  
HAVING COME UP FOR HEARING ON 8.07.2024, THE COURT ON  
31.7.2024 DELIVERED THE FOLLOWING: CrI.R.P.No.1 of 2018 2

**M.B.SNEHALATHA, J.**

----- CrI.R.P.No.1      of      2018  
----- Dated, this the 31st July, 2024

## **ORDER**

This Criminal Revision Petition has been filed by A3 in

C.C.No.479/2008 on the file of Judicial First Class Magistrate Court I, Kannur, assailing the judgment dated 12.7.2017 in CrI.A No.547/2009 whereby the Additional Sessions Court II, Thalassery confirmed the judgment of conviction and sentence against A3 dated 3.11.2009 of Judicial First Class Magistrate Court I, Kannur for the offences punishable under Sections 411 and 414 IPC.

2. Briefly stated facts are that PW1 Anwar lodged Ext.P1 first

information statement on 21.7.2008 stating that on 19.7.2008 while he along with his family had gone to Thalassery, thieves broke open his house and committed theft of gold ornaments, CD Player and foreign currencies kept in the almarah.

3. After investigation, the police arrested A1 to A3. A1 and A2 were charged for the offences punishable under Sections 457, 380 and 461 IPC. The revision petitioner/A3 herein was booked for the CrI.R.P.No.1 of 2018 3

offences under Sections 411 and 414 IPC. According to the prosecution, based on the disclosure statement of A1 and A3, MO1 gold bangle, MO2 series foreign currencies and MO3 CD Player were recovered from the possession of A3.

According to the prosecution, A3 dishonestly received the stolen property from A1 by knowing the same to be the stolen property.

4. After trial, by the judgment dated 3.11.2009, the learned Magistrate convicted and sentenced A1 for the offences punishable

under Sections 457, 380 and 461 IPC; A3 was convicted and sentenced for the offence punishable under Sections 411 and 414 of IPC; A2 was found not guilty and acquitted. A3 was sentenced to rigorous imprisonment for three years each and fine of 10,000/- each for the offences under Sections 411 and 414 IPC with default

### **custodial sentence of nine months each. From the said judgment**

of conviction and sentence, though A3 preferred appeal as Crl.A.No.547/2009 before the Sessions Court, Thalassery, the conviction and sentence against A3 was confirmed by the Sessions Court by the judgment impugned dated 12.7.2017.

5. The learned counsel for the revision petitioner/A3 confined his argument with regard to the sentence alone and Crl.R.P.No.1 of 2018 4

submitted that he is not challenging the finding of conviction against A3 for the offences under Section 411 and 414 IPC rather he seeks only a reduction of sentence. The learned counsel submitted that as there is no previous conviction against A3 who is now more than 65 years old, A3 may be released on probation. The learned counsel further submitted that the revision petitioner/A3 was in judicial custody in connection with this crime for more than 45 days and therefore the substantive sentence of imprisonment of the revision petitioner/A3 who is now aged more than 65 years and who ails from various illness may be reduced to the period already undergone by him in judicial custody. The learned counsel further pointed out that the crime took place in the year 2008 and now 16 years have elapsed and therefore the substantive sentence of imprisonment may be reduced to the period already undergone by him in judicial custody.

6. Though the learned Public Prosecutor would contend it is

not a fit case for releasing A3 on probation, he would admit that there is no previous conviction against A3. It is also admitted that the revision petitioner is now aged 65.

7. On going through the records and on an analysis of Crl.R.P.No.1 of 2018 5

evidence, this Court finds no reason to interfere with the finding of guilt rendered by the learned Magistrate and affirmed by the learned Sessions Judge that A3 dishonestly received the stolen property knowing the same to be the stolen property. Therefore, this Court finds no reason to interfere with the finding of conviction of A3 under Sections 411 and 414 of IPC.

8. The records would reveal that revision petitioner/A3 was in

judicial custody for the period from 2.8.2008 to 18.9.2008 ie. he was in custody for more than 45 days. Having regard to the fact that revision petitioner/A3 who is now aged 65 has no previous conviction and also regard being had to the fact that 16 years have elapsed from the date of commission of the offence, this Court finds

it just and proper to reduce the sentence of substantive imprisonment to the period already undergone by the revision petitioner in judicial custody. The fine imposed by the learned Magistrate which was confirmed by the learned Sessions Judge and the default stipulation shall remain intact. In the result, the Criminal Revision Petition allowed in part as follows: Crl.R.P.No.1 of 2018 6

a) The conviction of the revision petitioner/A3 for the offences under Sections 411 and 414 IPC stands confirmed. b) The substantive sentence of imprisonment is reduced to the period already undergone by him in judicial custody as indicated above. c) The revision petitioner/A3 shall pay the fine amount imposed by the trial court and confirmed in appeal by the appellate court. In default of payment of fine, he shall undergo imprisonment as ordered by the trial court and confirmed in appeal.

Sd/- M.B.SNEHALATHA JUDGE ab

