

Moncy Thomas vs State of Kerala

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Court : Kerala

Decided On : Apr-26-2023

Judge : Honourable Mr. Justice a.Muhammed Mustaque

Appeal No. : Crl.Rev.Pet/685/2003

Appellant : Moncy Thomas

Respondent : State of Kerala

Judgement :

Crl. Rev. Pet. 685 of 2003 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE WEDNESDAY, THE 26TH DAY OF APRIL 2023 / 6TH VAISAKHA, 1945 CRL.REV.PET NO. 685 OF 2003 AGAINST THE ORDER/JUDGMENTCC 71/1997 OF JUDICIAL MAGISTRATE OF FIRST CLASS - I, ETTUMANUR CRA 63/1999 OF ADDITIONAL SESSIONS COURT (SPECIAL COURT), KOTTAYAM / I ADDITIONAL MACT, KOTTAYAM

REVISION PETITIONER/APPELLANT/ACCUSED: MONCY THOMAS
AGED 1 YEARS THOOVANKAL HOUSE, VALARMANGALAM KARA,,
CHENGANNUR. BY ADV SRI.GEORGE SEBASTIAN
RESPONDENT/COMPLAINANT: STATE OF KERALA REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,, ERNAKULAM. BY
SR.PP., ADV. P.G. MANU THIS CRIMINAL REVISION PETITION
HAVING COME UP FOR ADMISSION ON 26.04.2023, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING: CrI. Rev. Pet. 685 of
2003 2

A.MUHAMED MUSTAQUE , J.

===== CrI. Rev. Pet. 685 of 2003
===== Dated this the 26th day of April,
2023

JUDGMENT

The revision petitioner has been convicted for an offence under Section 379 of the Indian Penal Code (for short, IPC). The sentence is to undergo one year imprisonment.

2. The revision petitioner was chargesheeted along with

other accused for the above offence on an allegation that the first accused snatched away a portion of gold ornaments of PW 2 weighing 7.5 grams and handed over to the third accused, who is the revision petitioner. The third accused apparently pledged that gold chain and obtained its value. In view of the common intention, accused Nos. 1 and 3 were convicted for the offence under Section 379 of IPC and accused No.2 appears to be absconding.

3. The learned Counsel for the revision petitioner argued in extenso and submitted that there was absolutely no

evidence to show that the offence was committed in furtherance of a common intention and, he has been convicted based on a recovery under Section 27 of the

Evidence Act. It is submitted that, at the best, the revision petitioner can be CrI. Rev. Pet. 685 of 2003 3

termed as a bonafide purchaser of gold ornaments and he can be only proceeded for the offence under Section 411 of IPC and for that, there must be evidence to show that he has a dishonest intention to receive and retain stolen property. It is further submitted that in the absence of any evidence showing that he had a dishonest intention to retain the stolen property, he cannot be convicted even for the offence under Section 411 of IPC.

4. The learned Public Prosecutor on the other hand

submitted that the past acquaintance of revision petitioner with the second accused clearly would establish that they had a common intention to commit the offence.

5. The revisional Court need to visit the finding of facts

only if there is a perversity in appreciation of evidence. On a perusal of the order and other materials, I am of the firm view that the conclusion arrived by both the Courts was based on proper appreciation of the evidence and it warrants no interference. However, taking note of the fact that the revision petitioner has now attained an age of 54, and the offence was committed 27 years ago and taking a lenient view, the sentence is modified. It is to be noted that he was already incarcerated for seven days during investigation stage. Keeping that in mind, the sentence is modified to payment of fine of Rs.10,000/- which

CrI. Rev. Pet. 685 of 2003 4 shall be paid within a period of two months. On default, he has to undergo imprisonment for one month. The CrI.Rev.Pet is disposed of as above. Sd/- A.MUHAMED MUSTAQUE JUDGE sbk/-

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