

Rajappan vs State of Kerala

Rajappan vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1624880

Court : Kerala

Decided On : Oct-28-2021

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : Crl.Rev.Pet/3266/2004

Appellant : Rajappan

Respondent : State of Kerala

Judgement :

CRL.REV.PET NO. 3266 OF 2004 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
THURSDAY, THE 28TH DAY OF OCTOBER 2021 / 6TH KARTHIKA,
1943 CRL.REV.PET NO. 3266 OF 2004 AGAINST THE JUDGMENT IN
CRL.A NO.48/1998 OF ADDITIONAL DISTRICT & SESSIONS COURT
(ADHOC), FAST TRACK COURT I, PATHANAMTHITTA CC 532/1995
OF JUDICIAL MAGISTRATE OF FIRST CLASS, RANNI,
PATHANAMTHITTA REVISION PETITIONER/APPELLANT/ACCUSED:
RAJAPPAN, S/O.KRISHNAN, VAYALINUVADAKKEKKARA HOUSE,
KATTUCHIRA, SEETHATHODE, CHITTAR. BY ADVS. SRI.V.PHILIP
MATHEW SRI.VIJAYA SANKAR RESPONDENT/RESPONDENT:

STATE OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SMT.M.K.PUSHPALATHA THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 28.10.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: CRL.REV.PET NO. 3266 OF 2004 2

ORDER

Dated this the 28th day of October, 2021 This revision petition has been directed against the judgment in Crl.A No.48/1998 dated 14.9.2004 on the file of the Additional Sessions Court (Adhoc), Fast Track Court I, Pathanamthitta, (for short 'the appellate court') confirming the judgment in C.C.No.532/1995 dated 5.3.1998 on the file of the Judicial First Class Magistrate Court, Ranny (for short 'the trial court').

2. The 1st accused is the revision petitioner. He along with the 2nd accused faced trial for offences punishable under Sections 457 and 380 of IPC.

3. The prosecution case in short is that on 11.8.1995 during the

night at 4.00 am. the accused trespassed into the house of PW1 and committed theft of one double cot, one single cot, one table and five wooden planks, worth Rs.7,500/- and thereby committed the offence.

4. The crime was registered on the basis of the first information

statement given by PW1, the defacto complainant. On completion of CRL.REV.PET NO. 3266 OF 2004 3 the investigation, final report was filed at the trial court. Process was issued and the accused entered appearance. Charge under Sections 457 and 380 IPC was framed against the accused. The charge was read over and explained to the accused who pleaded not guilty.

5. On the side of the prosecution, PWs 1 to 10 were examined

and Exts.P1 to P6 were marked. MO1 to MO4 series were identified. After trial, the trial court found the 1st accused/appellant guilty for the offence punishable under Sections 457 and 380 IPC and he was convicted for the said offence. He was sentenced to undergo rigorous imprisonment for a period of six months. The accused No.2 was found

not guilty and he was acquitted. The accused No.1 preferred the appeal challenging the conviction and sentence at the appellate court. The appellate court after hearing both sides dismissed the appeal as per the judgment dated 14.9.2004. Challenging the conviction and sentence passed by both the courts below, the 1st accused preferred this revision petition.

6. I have heard Sri.Amal Parthasarathy, the learned counsel for the revision petitioner and Smt.M.K.Pushpalatha, the learned Public Prosecutor. CRL.REV.PET NO. 3266 OF 2004 4

7. The prosecution mainly relied on the evidence of PWs 1, 2, 3

and 6 and also the recovery of stolen articles consequent to the confession statement made by the accused to prove its case and to fix the culpability on the accused. PW1 is the defacto complainant and the owner of the stolen properties. PW2 is the wife of PW1. PW3 is the person who purchased one of the stolen articles (single cot) from the 1st accused soon after the theft. PW6 is the neighbour of the 1st accused who purchased another stolen article (double cot) from him on 12.8.1995. Ext.P2 is the recovery mahazar of single cot recovered from PW3. It has been identified as MO2. Ext.P5 is the recovery mahazar of double cot recovered from PW6. The double cot has been identified as MO1. The rest of the stolen articles were recovered consequent to the confession statement given by the accused while in police custody, immediately after his arrest. Those stolen articles were identified as

MO3 series. Ext.P3 is the recovery mahazar and Ext.P3(a) is the relevant portion of the confession statement. PW10, the Sub Inspector of Police who recovered MOs 3 and 4, gave evidence about the recovery. The above evidence on record would clearly establish that the stolen articles belonged to PW1 and the accused

committed the

CRL.REV.PET NO. 3266 OF 2004 5 theft of the same. Both the courts concurrently found that the prosecution has succeeded in establishing beyond reasonable doubt that the 1st accused/appellant committed theft of MO1 to 4 series articles belonging to PW1.

8. It is well settled that the revisional jurisdiction under

Sections 397 and 401 Cr.P.C was to confer power upon superior criminal courts a kind of paternal or supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent

harshness of treatment. It has been consistently held by the Apex Court that the jurisdiction of the High Court in revision is severely restricted and it cannot embark upon re-appreciation of evidence. The Hon'ble Supreme Court in State of Maharashtra vs Jagmohan Singh Kuldip Singh Anand and others (2004(7) SCC 659) has held that while exercising the revisional powers under Section 397 r/w 401 of the Code of Criminal Procedure, the court is required to find out if there is any illegality or impropriety in the findings of the trial court and the appellate court warranting interference and it is not open to the High Court to exercise the revisional power as the second appellate forum.

CRL.REV.PET NO. 3266 OF 2004 6 In Shlok Bhardwaj v. Runika Bhardwarj and others [(2015) 2 SCC 721], it was held that the scope of revisional jurisdiction of the High Court does not extend to re-appreciation of evidence.

9. The learned counsel for the revision petitioner submitted that there is a delay in lodging the FIR and that the evidence would disclose that even before the lodging of FIR, PW1 had informed the

police about the theft. PW1 gave evidence that when the theft was taken place, her husband was not in the station and after her husband returned, he made some local enquiries before lodging Ext.P1 FIS. Thus, the delay in lodging the FIS has been satisfactorily explained. It is true, the evidence on record would disclose that

before formal lodging of Ext.P1 FIS, PW1 informed the police about the theft. If a person goes to the Police Station and informs to the police about some incident, that itself may not always be sufficient to register a crime. The statement given to the Station House Officer and disclosing the commission of cognizable offence will get the status of FIS. Hence, the said contention of the learned counsel for the revision petitioner must fail.

10. Since there are concurrent findings of the two courts below, CRL.REV.PET NO. 3266 OF 2004 7

this Court would be circumspect in invoking the revisional powers under Sections 397 r/w 401 of the Code of Criminal Procedure. It is only if the decision rendered by the two courts below can be said to be either perverse, arbitrary or capricious, this Court can invoke such powers. I have carefully gone through the entire records, evidence, proceedings and the judgments of the two courts below. I find no impropriety or illegality therein warranting interference under the exercise of revisional powers vested with the courts. The sentence passed by the courts below also appears to be reasonable. There is no merit in the Criminal Revision Petition and accordingly it stands dismissed. Sd/- DR. KAUSER EDAPPAGATH
JUDGE ab

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com