

Shahida Vs. State of Kerala

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Court : Kerala

Decided On : Dec-16-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Shahida

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN TUESDAY, THE 16TH DAY OF DECEMBER 2014 25TH AGRAHAYANA, 1936 CrI.Rev.Pet.No. 2164 of 2014 ()
----- AGAINST THE

ORDER

IN CrI. APPEAL 5522014 OF SESSIONS COURT, ERNAKULAM, DATED 08-12-2014 & AGAINST THE

JUDGMENT

IN CC 27212013 of J.M.F.C.-II, KOCHI, DATED 27-08-2013 REVISION PETITIONER(S): ----- SHAHIDA, AGED 23 YEARS, D/O. MOIDEEN KUTTY KALANTHAR, KONARIL HOUSE, OLAKKARALUMMANA VALIYAPARAMBU, PERUVALLOOR GRAMAPANCHAYATH, MALAPPURAM DIST. BY ADV. SRI. NIREESH MATHEW RESPONDENT(S): ----- STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH

COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SRI. N. SURESH THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 16.12.2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: :2: Crl.Rev.Pet.No. 2164 of 2014 APPENDIX PETITIONER'S EXHIBITS : ANNEXURE-A : PHOTOCOPY OF THE

JUDGMENT

DATED 27.08.2013 IN C.C.NO.2721/2013 PASSED BY THE JUDL.FIRST CLASS MAGISTRATE COURT-II, KOCHI. RESPONDENTS EXHIBITS : NIL // True Copy// P.A. To Judge ss K. RAMAKRISHNAN, J.

..... Crl. R.P. No.2164 of 2014
..... Dated this the 16th day of December, 2014

ORDER

Petitioner in Crl.M.P.No.3199/2014 in Crl.Appeal No.552/2014 of Sessions Court, Ernakulam, is the revision petitioner herein.

2. He was charge-sheeted by the Sub Inspector of Police, Kasaba Police Station, Kochi, in Crime No.1285/2013 under Section 381 and 462 of the Indian penal Code. After investigation final report was filed and the case was taken on file as C.C.No.2721/2013 on the file of the Judicial First Class Magistrate Court -II, Kochi, and the revision petitioner appeared before the court below and on his appearance, charge was framed under Section 381 and 462 of the Indian Penal Code and it was read over and explained to him and he pleaded guilty and accepting the plea of guilt, the learned magistrate convicted him and sentenced him to undergo simple imprisonment for three years and also to pay a fine of 5,000/-, in default to Crl. R.P. No.2164 of 2014 2 undergo simple imprisonment for three months. Aggrieved by the same, he filed Crl.Appeal No.552/2014 before the Sessions Court, Ernakulam, along with delay condonation application and also moved Crl.M.P.No.3199/2014 for suspending the sentence alone. It is seen from the statement of facts that, the learned Sessions Judge had condoned the delay and admitted the appeal, but dismissed the application Crl.M.P.No.3199/2014 by

the impugned order, which is challenged by the revision petitioner, by filing this revision.

3. Considering the scope of enquiry and also to avoid delay in this matter, this court felt that, the revision can be admitted, heard and disposed of after hearing the Public Prosecutor and the counsel for the revision petitioner. So the revision is admitted, heard and disposed of today itself.

4. The counsel for the revision petitioner submitted that, the order passed by the court below is CrI. R.P. No.2164 of 2014 is illegal, especially when the court had admitted the appeal, court should have suspended the sentence.

5. Learned Public Prosecutor supported the impugned order.

6. It is an admitted fact that the revision petitioner was charge sheeted by the Sub Inspector of police, Kasaba police station, Kochi, in Crime No.1285/2013, alleging commission of the offence under Section 381 and 462 of the Indian Penal Code and after investigation final report was filed and it was taken on file as C.C.No.2721/2013 on the file of Judicial First Class Magistrate Court-II, Kochi. It is also an admitted fact that, when the revision petitioner was arrested and produced before that court, charge under Section 381 and 462 of the Indian Penal Code was framed and the same was read over and explained to him and he pleaded guilty. Accepting that plea as voluntary, the learned magistrate had convicted him and sentenced him to undergo imprisonment for three years CrI. R.P. No.2164 of 2014 and also to pay a fine of 5,000/- and in default to undergo simple imprisonment for three months more and set off was allowed for the period of detention already undergone by him. The legality of this order has been challenged by the revision petitioner by filing CrI.Appeal No.552/2014 before the Sessions Court, Ernakulam, along with delay condonation application and application to suspend the sentence as CrI.M.P.No.3199/2014 and the learned Sessions Judge had condoned the delay and admitted the appeal, but by the impugned order, the learned Sessions Judge dismissed the application CrI.M.P.No.3199/2014, which reads as follows: "From a perusal of the available materials, I am of the view that petitioner could not make out a case to suspend the conviction and sentence passed against him. It appears, the petitioner had pleaded guilty before the court below and he is

undergoing remand. Hence this petition stands dismissed." 7. It is seen from the statement of facts that the revision petitioner wanted only to suspend the sentence and Crl. R.P. No.2164 of 2014 5 there is no prayer for suspending the conviction. But the order shows that, the prayer is for suspending conviction also. That shows that, there is no application of mind made by the court below, while considering the application. Further having admitted the appeal, the court below ought to have taken a lenient view and should have suspended the sentence on certain conditions. I am not at this stage, going to the question as to whether the magistrate was justified in accepting the plea under the circumstances mentioned and passing the impugned order, which has to be considered by the Sessions Court on hearing the appeal on merit. So the order passed by the court below is liable to be set aside and the revision is allowed and the order in Crl.M.P.No.3199/2014 in Crl.Appeal No.552/2014 of Sessions Judge, Ernakulam, is set aside and the application is allowed on the following conditions. Execution of sentence in C.C.No.2721/2013 of Judicial First Class Magistrate Court-II, Kochi, Crl. R.P. No.2164 of 2014 6 is suspended and the petitioner is directed to be released on bail, on executing a bond of 25,000/- with two solvent sureties for the like sum each, to the satisfaction of the Judicial First Class Magistrate Court-II, Kochi, and on further condition that the petitioner shall not leave Ernakulam District, till the disposal of the appeal. With the above conditions, the revision is allowed and disposed of. Office is directed to communicate this order to the concerned court, immediately. The Sessions Judge is directed to expedite disposal of the appeal at the earliest. Sd/- K. Ramakrishnan, Judge // True Copy// P.A. to Judge ss

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