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Jayan Vs. State of Kerala

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Court : Kerala

Decided On : Aug-13-2015

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appellant : Jayan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V THURSDAY, THE13H DAY OF AUGUST201522ND SRAVANA, 1937 Crl.Rev.Pet.No. 2065 of 2003 (D) ---------- AGAINST THE

JUDGMENT
IN CRL.A.NO.201/1996 of ADDL.SESSIONS COURT, KOTTAYAM DATED0701-2003 AGAINST THE

JUDGMENT
IN C.C.NO.193/1993 of J.M.F.C.-II, KANJIRAPPALLY DATED0908-1996 REVISION PETITIONER(S)/APPELLANT/ACCUSED: ---------- JAYAN, S/O.KRISHNAN, JAYASADANATHIL VEEDU, 3RD MILE BHAGOM, KIZHAKKEBAGOM KARA, CHIRAKKADAVU VILLAGE, NOW RESIDING AT 'JAYASADANAM', CHIRAKADAVU CENTRE P.O, PONKUNNAM, KOTTAYAM DISTRICT. BY ADV.

SRI.JOBI JOSE KONDODY RESPONDENT(S)/RESPONDENT/COMPLAINANT: ---------- STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA AT ERNAKULAM BY PUBLIC PROSECUTOR SMT.LISHA.M.G. THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON1308- 2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Bb RAJA VIJAYARAGHAVAN V, J.

---------- Crl.R.P.No.2065 of 2003 ---------- Dated this the 13th day of August, 2015

ORDER

In this revision petition filed under sections 397 and 401 of the Code of Criminal Procedure, the petitioner herein challenges the concurrent findings arrived at against him by the courts below. The petitioner was the accused in C.C.No.193/1993 on the files of the Judicial First Class Magistrate Court - II, Kanjirapally. The said case was charge sheeted by the Sub Inspector of police, Ponkunnam under section 419 of the Indian Penal Code.

2. The prosecution case as is revealed from the records is that as follows: PW2 - the Joint Regional Transport Officer received a complaint sent by the agent of Thaniniram Daily, wherein it was mentioned that Jayan @ Suresh had obtained a driving licence without obtaining necessary qualification by Crl.R.P.No.2065 of 2003 :

2. : impersonating his brother-in-law Suresh. Thereafter, the said person was working as a conductor in the bus bearing Reg.No.KL6/1801 belonging to the S.N.T. bus service. Ext.P3 is the complaint which was forwarded along with Ext.P20 letter to the police station which was received by the PW17 - the Head Constable attached to the Ponkunnam police station, on the basis of which, Ext.P19 First Information Report was registered under section 471 of the Indian Penal Code.

3. The case of the prosecution in a nut shell was that the petitioner Jayan who had studied up to the 9th standard, with intent to cheat the officials for the purpose of

obtaining a conductor licence, impersonated CW2, his brother-in-law who had studied up to 10th standard and obtained possession of the S.S.L.C. book and also obtained necessary documents from PWs 1 & 3 and filed an application before PW2 and obtained conductor licence in the name of Suresh and thereby committed the aforesaid offences. Crl.R.P.No.2065 of 2003 :

3. :

4. On the basis of a complaint submitted by one Vasu, Crime No.71/1993 of Ponkunnam police station was registered. Later, investigation was conducted and charge sheet was laid before court.

5. On appearance of the accused before the learned magistrate and after hearing the prosecution and the accused, charge was framed under section 419 of the Indian Penal Code. When the same was read over and explained to the accused, he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 21 were examined and Exts. P1 to P29 were marked. On the close of prosecution evidence, the incriminating materials arising out of the prosecution evidence was put to the accused under section 313 of the Code of Criminal Procedure. The incriminating circumstances were denied and the accused maintained that he was innocent. On the side of the defence, DWs 1 to 3 were examined and Exts.D1 to D5 were marked. The Crl.R.P.No.2065 of 2003 :

4. : learned magistrate, on an elaborate appreciation of the evidence, both oral and documentary adduced by the prosecution, came to the conclusion that the accused was guilty of the offence under section 419 of the Indian Penal Code and he was convicted and sentenced to undergo rigorous imprisonment for 1 year. Against the above conviction and sentence, the petitioner herein preferred appeal before the Court of Sessions, Kottayam as Crl.A.No.201/1996. The learned Sessions Judge has re- appreciated the evidence and after considering all the aspects, came to the conclusion that the petitioner had obtained a licence which he is not entitled to obtain normally and so the petitioner was not entitled to the benefit of the benevolent provisions of the Probation of Offenders Act. The learned Sessions Judge came to the conclusion that there was no reason to disagree with the reasons given by the learned magistrate. But, at the same time, the learned

Sessions Judge, after considering the fact that the petitioner had applied for getting conductor licence Crl.R.P.No.2065 of 2003 :

5. : for the purpose of eking out his livelihood and finding that there are no criminal records as against the accused, the sentence of 1 year's rigorous imprisonment imposed by the court below was set aside and the same was modified to 3 months simple imprisonment under section 419 of the Indian Penal Code. It is against the above finding that the petitioner is here in revision.

6. The learned counsel appearing for the petitioner has fervently contented that the findings entered in to by the courts below are against law and evidence and the same was liable to be set aside. It was contented that the judgment passed by the learned magistrate was confirmed by the learned Sessions Judge without due appreciation of the evidence. According to the learned counsel, the sentence imposed against the petitioner is excessive and it warrants interference.

7. I have perused the judgments rendered by the Crl.R.P.No.2065 of 2003 :

6. : courts below and have heard the learned counsel in extenso. Even though the learned counsel appearing for revision petitioner has assailed the impugned judgments on various grounds, I do not see any scope for interference. The findings rendered by the courts below are on the basis of appreciation of the oral and documentary evidence. The evidence of witnesses have been considered in minute detail by both the courts.

8. While exercising revisional powers, this Court will not be justified in interfering with the concurrent findings. In so far as the sentence is concerned, I take note of the long pendency of the matter. The crime is of the year 1993 and more than 2 decades have elapsed. The records would reveal that the act was committed by the petitioner for the purpose of obtaining a job as a conductor in a bus. Though ample sympathy was shown to the petitioner by the learned Sessions Judge while reducing the sentence of imprisonment from 1 year to simple imprisonment for 3 months under Crl.R.P.No.2065 of 2003 :

7. : section 419 of the Indian Penal Code, I am of the considered view that the sentence can be modified to Simple Imprisonment for one month and to pay a fine of Rs.5,000/-. This revision petition is dismissed but the sentence imposed by the learned Magistrate as modified by the learned Sessions Judge is further modified and the petitioner is sentenced to undergo Simple Imprisonment for one month and also to pay a fine of Rs.5,000/- in default to undergo Simple Imprisonment for one month. The revision petition is disposed of as above. Sd/- RAJA VIJAYARAGHAVAN V, JUDGE. Bb [True copy] P.A to Judge

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