

Bharathan and Others Vs. State of Kerala

Bharathan and Others Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/947048

Court : Kerala

Decided On : Aug-18-2011

Reported in : 2011(4)KLJ270; 2011(4)KLT655; 2011(4)KHC173

Judge : P.S. Gopinathan

Appeal No. : C.R.P.No.825 of 2002

Appellant : Bharathan and Others

Respondent : State of Kerala

Judgement :

P.S. Gopinathan, J.

1. Revision Petitioners are accused 1, 3, 4 and 5 in C.C.448 of 1997 on the file of the Judicial Magistrate of the First Class, Kodungallur. They, along with the second accused, were prosecuted by the Sub Inspector of Police, Valapad, in Crime No.236 of 1997 alleging offence under Sections 143, 147, 447, 427 r/s 149 I.P.C. After trial, the second accused was found not guilty and the petitioners were found guilty. Taking into account of the facts and circumstances of the case and that petitioners 3 to 5 are ladies, the learned Magistrate was pleased to release the petitioners under Section 3 of the Probation of Offenders Act. The first revision petitioner was ordered to pay Rs.2,000/- as compensation to the complainant under Section 357(3) of the Code of Criminal Procedure. Feeling aggrieved, they went in appeal before the Sessions Judge, Thrissur. The Illrd Additional Sessions

Judge, to whom the appeal was made over, by judgment dated 26.4.2002 allowed the appeal in part. The conviction for offence under Sections 143 and 147 was set aside. The conviction for offence under Sections 447 and 427 IPC was sustained with the aid of Section 34 I.P.C. Assailing the legality, correctness and propriety of the above conviction and the order to pay compensation, this revision petition was filed.

2. I have heard Sri. Shaju Purushothaman, the learned counsel appearing for the petitioners and perused the judgments of the courts below. Having heard the counsel and perusing the records, I find little reason to interfere with the conviction for offence under Sections 447 and 427 r/w 34 I.P.C. The conviction is based upon cogent evidence. Learned Counsel for the revision petitioners further submitted that the order to pay compensation under Section 357(3) of the Code of Criminal Procedure is not sustainable. I find merit in the submission because sub clauses (1) and (2) of Section 357 Cr.P.C. operate only when a sentence is imposed and in the case on hand no sentence is imposed. Therefore, order awarding compensation u/s. 357(3) Cr.P.C. is not sustainable. But, at the same time, I find that in a case of release under Section 3 of Probation of Offenders Act, the court is empowered u/s 5 of the Probation of Offenders Act to award compensation to the defacto complainant for the loss or injury sustained. The case on hand is a fit case to award compensation. Therefore, I find that the order of the courts below to pay compensation is not at all illegal and only the section is misquoted. Misquoting the section would not affect the core of the order. Other than that, I find no error, illegality or impropriety in the judgment impugned.

In the above circumstance, this revision petition is disposed of. While confirming the conviction, the order to pay compensation awarded by the trial court and confirmed in appeal is modified to one under Section 5 of the Probation of Offender's Act. In all other respects, order impugned is confirmed. The revision petitioner is granted one month to remit the compensation.

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