

Mini Vs Kerala State

Court: High Court Of Kerala

Date of Decision: Jan. 17, 2025

Acts Referred: Code of Criminal Procedure, 1973 " Section 357(3), 397, 401
 Indian Penal Code, 1860 " Section 34, 294(b), 323

Hon'ble Judges: G.Girish, J

Bench: Single Bench

Advocate: Jaison Joseph, Seetha.S

Final Decision: Partly Allowed

Judgement

G.Girish, J

1. The judgment dated 10.08.2015 of the Additional Sessions Court-II, North Paravur, in CrI.A.No.239/2014 is under challenge in this revision. The

petitioners are the appellants in the above appeal who were convicted and sentenced by the Judicial First Class Magistrate-II, Aluva, in

C.C.No.571/2008 for the commission of offence under Section 294(b) and Section 323 of the Indian Penal Code, 1860(in short, "IPC"). In the

appeal, the learned Additional Sessions Judge set aside the conviction and sentence for the offence under Section 294(b) IPC and retained the

conviction and sentence awarded by the Trial Court for the offence under Section 323 IPC. Aggrieved by the above verdict of the Additional Sessions

Court, the petitioner is here before this Court with this revision.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State of Kerala.

3. The accusation under Section 323 IPC is based on the prosecution case that on 06.05.2007 the accused Nos.1 to 4 attacked the defacto

complainant (PW1) with a stone and inflicted voluntary hurt upon her. Before the Trial Court, the prosecution examined five witnesses as PW1 to

PW5, and marked three documents as Exts P1 to P3 to substantiate the indictment against the accused. Among the above witnesses, PW1, the

defacto complainant testified before the court about the physical assault mounted upon her by the petitioners. The other independent witnesses

examined as PW2 & PW3 did not support the prosecution case. However, the Trial Court found the testimony of PW1 reliable, and accordingly,

convicted the petitioners for the commission of offence under section 294(b) and 323 IPC read with Section 34 IPC. A sentence of simple

imprisonment for one month under Section 294(b) IPC and a sentence of imprisonment for six months and fine of Rs.1,000/-each with a default clause

of simple imprisonment for one month was awarded for the commission of offence under Section 323 IPC.

Ã, 4. The Appellate Court found that the evidence adduced by the prosecution before the Trial Court did not establish the offence under Section

294(b) IPC. However, the finding of the Trial Court about the commission of offence under Section 323 IPC by the accused was upheld by the

Appellate Court. On a re-appreciation of the entire evidence, the learned Additional Sessions Judge found that the testimony of the defacto

complainant as PW1 about the physical assault perpetrated on her by the accused, was reliable and trustworthy. It is on the basis of the above finding

that the learned Additional Sessions Judge retained the conviction and sentence awarded by the Trial Court for the offence under Section 323 IPC.

There is absolutely no irregularity and impropriety in the aforesaid finding of the Appellate Court. Nothing could be brought out by the petitioner to

show that the courts below relied on any evidence which were inadmissible or that any evidence which ought to have been relied on, was discarded.

5. The proposition of law upon the scope of interference in revision, is well settled by a catena of decisions of the Hon'ble Supreme Court.

6. InÃ, State of Kerala v. Jathadevan Namboodiri : AIR 1999 SC 981, the Hon'ble Supreme Court held as follows:

Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence

has already been appreciated by the Magistrate as well as Sessions Judge in appeal unless any glaring feature is brought to the notice of the High Court which

would otherwise tantamount to gross miscarriage of justice.

Ã, 7. In Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke & Anr :2015 (3) SCC 123, it has been held by the Hon'ble Supreme Court as

follows:

Ã, Revisional power of the court under Sections 397 to 401 of Cr.PC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is

sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material

or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision

in exercise of their revisional jurisdiction.

Ã, 8.Ã, Ã, Referring the above dictums, the Apex Court has observed in Kishan Rao v. Shankargouda : 2018 (8) SCC 165 as follows:

Another judgment which has also been referred to and relied by the High Court is the judgment of this Court in Sanjaysinh Ramrao Chavan vs. Dattatray

Gulabrao Phalke and others, 2015 (3) SCC 123. This Court held that the High Court in exercise of revisional jurisdiction shall not interfere with the order of the

Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground

that another view is possible. Following has been laid down in paragraph 14:

“14.....Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant

material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The

Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in

accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an

appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly

unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised

arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.”

9. As far as the present case is concerned, there is nothing on record to show that the view taken by the courts below in finding the petitioners

guilty of commission of offence under Section 323 IPC is wholly unreasonable, or there is palpable misreading of records. Therefore, there is

absolutely no reason to interfere with the findings of courts below leading to the conviction of the petitioners for the commission of offence under

Section 323 IPC. However, taking into account the fact that the petitioners/accused have been facing criminal prosecution for the past 17 years, and

also the nature and gravity of the offence found to have been committed by the petitioners, I deem it appropriate to modify the punishment awarded to

the petitioners by limiting the tenure of detention as imprisonment till the rising of the Court, coupled with a direction to pay an amount of Rs.5,000/-

each by the petitioners to the defacto complainant (PW1) as compensation under Section 357 (3) of the Code of Criminal Procedure, 1973.

In the result, the revision is allowed in part as follows:-

(i)The conviction of the petitioners for the offence under section 323 IPC is upheld.

(ii)The sentence awarded to the petitioners is modified as imprisonment till the rising of the Court with a direction to pay compensation Rs.5,000/- each

to the defacto complainant (PW1) under Section 357(3) Cr.P.C.

(iii) In the event of failure of any of the petitioners to pay compensation as directed above, the defaulters concerned will undergo simple imprisonment

for a term of three months.

(iv) The petitioners are directed to appear before the Trial Court to undergo the modified sentence as awarded above, on or before 17.02.2025.

Ã, Transmit the case records along with a copy of this order to the Trial Court immediately.

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