



2026:KER:78245

Crl.R.P.No.2801 of 2007

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

WEDNESDAY, THE 7TH DAY OF OCTOBER 2026 / 15TH ASWINA, 1948

CRL.REV.PET NO. 2801 OF 2007

**AGAINST THE ORDER/JUDGMENT DATED 30.03.2007 IN CRL.A
NO.256 OF 2005 OF VI ADDITIONAL SESSIONS JUDGE, ERNAKULAM,
ARISING OUT OF THE ORDER/JUDGMENT DATED 04.03.2005 IN CC
NO.1264 OF 2000 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II,
ERNAKULAM**

REVISION PETITIONER/APPELLANT:

**NAJEEB
S/O. ISMAIL, BHAVATHIPPARAMBU VEETIL,,
DESHABHIMANI ROAD, KALOOR, ELAMKULAM VILLAGE.**

**BY ADVS.
SRI.P.B.ASOKAN
SHRI.R.VINU RAJ**

RESPONDENT/RESPONDENT:

**STATE OF KERALA
REPRESENTED BY SUB INSPECTOR OF POLICE,,
E.T.NORTH POLICE STATION (CRIME NO.232/2000).**

BY ADV PUBLIC PROSECUTOR

OTHER PRESENT:

SMT. TANYA JOY, PP

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 07.10.2026, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**



Crl.R.P.No.2801 of 2007

2

ORDER

(Dated this the 7th day of October, 2026)

This Criminal Revision Petition has been filed under Sections 397 and 401 of the Code of Criminal Procedure, challenging the judgment dated 30.03.2007 in Criminal Appeal No. 256 of 2005 on the file of the Additional Sessions Court-VI, Ernakulam, arising out of the judgment dated 04.03.2005 in C.C. No. 1264 of 2000 on the file of the Judicial First Class Magistrate Court-II, Ernakulam. By the said judgment, the revision petitioner herein was found guilty and convicted for the offence punishable under Section 292 of the Indian Penal Code. The revision petitioner is the sole accused in the said case.

2. The prosecution case, in brief, is that, on 29.06.2000, the accused, with an intention to make unlawful gain, was found engaged in the sale of obscene video cassettes and CDs in his video shop situated at Deshabhimani Road, Ernakulam, and thereby committed an offence punishable under Section 292 of the Indian Penal Code.

3. During the trial, the prosecution examined six



Crl.R.P.No.2801 of 2007

3

witnesses as PWs.1 to 6 and marked Exts. P1 to P6. MOs.1 and 2 were also produced and marked. After the closure of the prosecution evidence, the accused was questioned under Section 313 of the Cr.P.C., during which he denied all the incriminating circumstances put to him. No evidence whatsoever was adduced on the side of the defence.

4. After hearing both sides, the learned Magistrate found the accused guilty of the offence punishable under Section 292 of the Indian Penal Code and sentenced him to undergo simple imprisonment for six months and to pay a fine of Rs.1,000/-, and in default of payment of fine, to undergo simple imprisonment for two months.

5. Aggrieved by the said judgment, the accused preferred an appeal and the learned Additional Sessions Judge, Ernakulam, after hearing the appeal, confirmed the conviction as well as the sentence imposed by the trial court and dismissed the appeal. Aggrieved by the said judgment, the accused has preferred the present revision petition.

6. Heard Sri. Rahul Sunil, the learned Amicus Curiae,



Crl.R.P.No.2801 of 2007

4

and Smt. Tanya Joy, the learned Public Prosecutor. The records were also perused.

7. The learned Amicus Curiae submitted that the trial court as well as the appellate court failed to appreciate the evidence on record in its proper perspective and convicted the accused without sufficient evidence. According to the learned Amicus Curiae, the nature and contents of the CDs and video cassettes allegedly seized from the accused were not proved by the prosecution. It was contended that, in the absence of sufficient material to arrive at a judicial satisfaction that the CDs and video cassettes contained obscene material, the conviction under Section 292 of the IPC could not be sustained. The learned Amicus Curiae further submitted that, before recording a conviction, the learned Magistrate ought to have viewed and examined the CDs and video cassettes so as to satisfy himself that they contained obscene scenes. According to the learned Amicus Curiae, in the absence of such an examination by the trial court, the conviction is unsustainable.

8. Per contra, the learned Public Prosecutor submitted that the trial court as well as the appellate court, after properly



Crl.R.P.No.2801 of 2007

5

appreciating the evidence and materials on record, entered a finding of guilt against the accused and, therefore, no interference with the impugned judgments is warranted.

9. As already noticed, the specific allegation against the accused is that he was found engaged in the sale of obscene video cassettes and CDs in his video shop. The main contention raised by the learned Amicus Curiae is that the prosecution has failed to establish the essential ingredients constituting the offence under Section 292 of the IPC. According to the learned Amicus Curiae, except for some bald assertion of the detecting officer that he had viewed the CDs and video cassettes and found them to contain obscene scenes, there is absolutely no evidence to establish that the contents satisfied the statutory test of obscenity.

10. While considering the said contention, it is to be borne in mind that Section 292 of the IPC does not render every sexually suggestive or explicit material punishable. A plain reading of Section 292 of the IPC makes it clear that, for an object or material to be classified as obscene, it must be shown to be lascivious or to appeal to the prurient interest, or that its



Crl.R.P.No.2801 of 2007

6

effect, taken as a whole, is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied therein. Therefore, a successful prosecution for an offence under Section 292 of the IPC requires the prosecution to establish the aforesaid statutory ingredients beyond reasonable doubt.

11. In the present case, the prosecution has not produced any evidence regarding the nature or contents of the materials allegedly contained in the CDs and video cassettes. No description of the scenes, visuals or other contents has been brought on record. The only material relied upon by the prosecution in this regard is the bald statement of the investigating officer, made during his examination before the court, that he had viewed the cassettes and CDs and found them to be obscene.

12. Significantly, the trial court has not undertaken any discussion as to how the contents of the CDs and video cassettes satisfied the statutory requirements of being lascivious, appealing to prurient interest, or tending to deprave



Crl.R.P.No.2801 of 2007

7

and corrupt persons who were likely to view them. The trial court appears to have acted solely upon the opinion of the investigating officer that the materials were obscene, without independently examining the contents of the CDs and video cassettes.

13. This Court, in ***Harikumar v. State of Kerala*** (2025 KHC 938), has held that, when a video cassette allegedly containing obscene scenes is produced in a prosecution under Section 292 of the IPC, the court must view and examine the cassette to satisfy itself that it contains scenes which are lascivious or appeal to the prurient, lustful or satyric instincts of the viewer. Therefore, before recording a conviction under Section 292 of the IPC, the court must itself be satisfied that the contents constitute obscenity. Unless the trial judge directly examines the contents of the video cassettes or CDs alleged to contain obscene scenes and records a finding, based on such examination, that the contents are obscene, a conviction under Section 292 of the IPC cannot be sustained.

14. In the present case, there is no material on record to show that the learned Magistrate had personally viewed or



Crl.R.P.No.2801 of 2007

8

examined the contents of the CDs and video cassettes. Further, there is no finding based on an independent examination by the trial court as to how the contents satisfied the statutory test of obscenity contemplated under Section 292 of the IPC. The mere opinion of the investigating officer that the materials were obscene, without any supporting description or judicial examination of their contents, is insufficient to establish the essential ingredients of the offence beyond reasonable doubt.

15. In the above circumstances, this Court has no hesitation in holding that the prosecution has failed to establish the essential ingredients of the offence punishable under Section 292 of the IPC beyond reasonable doubt. Consequently, the conviction of the revision petitioner cannot be sustained.

In the result, this Criminal Revision Petition is allowed. The judgment of conviction and order of sentence passed against the revision petitioner/accused by the learned Additional Sessions Judge-VI, Ernakulam, in Criminal Appeal No. 256 of 2005, arising out of C.C. No. 1264 of 2000 on the file of the Judicial First Class Magistrate Court-II, Ernakulam, are hereby



Crl.R.P.No.2801 of 2007

9

set aside. The revision petitioner/accused is acquitted of the offence charged against him. The bail bond, if any, executed by him shall stand cancelled.

Sd/-
JOBIN SEBASTIAN
JUDGE

Pvv