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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

TUESDAY, THE 14TH DAY OF NOVEMBER 2023 / 23RD KARTHIKA, 1945

CRL.REV.PET NO. 1895 OF 2006

AGAINST THE JUDGMENT IN CRA 187/2003 DATED 18.01.2006 OF SESSIONS JUDGE, PATHANAMTHITTA CHALLENGING THE JUDGMENT IN CC 165/2001 OF CHIEF JUDICIAL MAGISTRATE PATHANAMTHITTA

REVISION PETITIONER/APPELLANT/ACCUSED:

SAJI CHARIVUKALA PUTHENVEEDU, KADAMBANADU VILLAGE.

BY ADV SRI.V.PHILIP MATHEW

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

SRI SANAL P.RAJ - PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR HEARING ON 06.11.2023, THE COURT ON 14.11.2023 DELIVERED THE FOLLOWING:

G.GIRISH, J.

Crl.R.P.No.1895 of 2006

Dated this the 14th day of November, 2023

O R D E R

This revision is directed against the judgment rendered by the Sessions Court, Pathanamthitta in Crl.A.No.187/2003 upholding the verdict of the Chief Judicial Magistrate, Pathanamthitta in C.C.No.165/2001, convicting and sentencing the petitioner for the commission of the offence under Sections 279 and 304A I.P.C.

2. The petitioner, a driver of a private bus, is alleged to have driven the bus by name 'Thirumeni' through the road near Pathanamthitta traffic island at about 9:30 a.m. on 12.04.2001 in a rash and negligent manner likely to endanger human life and caused the death of a person by name Karunakaran by dashing the bus against him from behind while he was walking by the side of the tarred road.

3. On the basis of the final report filed by the Circle Inspector of Police, Pathanamthitta, the learned Chief Judicial Magistrate, Pathanamthitta took cognizance of the offence and issued summons to the petitioner who appeared before the learned Magistrate and pleaded not guilty. After the conclusion of the trial, with the examination of 10 prosecution witnesses as PW1 to PW10 and marking 13 documents as Exhibits P1 to P13 and identifying one set of material objects as MO1 series, the learned Chief Judicial Magistrate found the petitioner guilty of Section 304A I.P.C and Section 279 I.P.C and convicted him thereunder. A sentence of simple imprisonment for one year under Section 304A I.P.C, and simple imprisonment for six months under Section 279 I.P.C were imposed with the direction that the tenure of the above sentences shall run concurrently. Though the petitioner preferred appeal before the learned Sessions Judge, Pathanamthitta, the appellate court, as per the impugned judgment dated 18.01.2006 in Crl.A.No.187/2003, declined to interfere, and upheld the conviction and sentence imposed by the

learned Magistrate.

4. Aggrieved by the above concurrent findings of the trial court and the appellate court, the petitioner is here with this revision petition contending inter alia that the courts below went wrong in relying on the prosecution evidence and convicting and sentencing the petitioner.

5. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

6. The learned counsel for the revision petitioner advanced arguments assailing the evidence adduced by the prosecution before the trial court, canvassing the point that there is no legally sustainable evidence for warranting a conviction under Sections 279 and 304A I.P.C. It is argued that the evidence adduced by PW3, an eye witness to the accident, ought to have been discarded by the trial court and the appellate court. The learned counsel for the revision petitioner would also contend that the omission on the part of the investigating agency to cite and examine the police personnel on traffic duty at the traffic island in Pathanamthitta town, has to be taken as a circumstance

vitiating trial. I am afraid, the arguments advanced by the learned counsel for the revision petitioner in the above regard are beyond the scope of the provisions contained under Sections 397 to 401 of the Code of Criminal Procedure. The revisional power of this Court cannot 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, it is not possible to reverse the findings in the proceedings of revision. The proposition of law in this regard is well settled by a catena of decisions of the Hon'ble Supreme Court.

7. In ***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.*

8. 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:

> *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*.

9. 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."

10. As far as the present case is concerned, the revision petitioner could not bring out anything to show that the judgment under challenge is vitiated due to any illegality, irregularity or glaring error. Nor could the learned counsel for the petitioner point out anything to show that

the decision is based on irrelevant and unacceptable materials or that the courts below wholly ignored the material facts and rendered the decisions arbitrarily or capriciously. Thus, there is absolutely no scope for interference with the findings of the trial court and appellate court leading to the conviction of the petitioner for the offence under Sections 279 and 304A I.P.C.

11. Now the question to be looked into is whether the sentence imposed by the courts below requires any modification. The learned counsel for the petitioner would contend that the incident involved in this case took place two decades ago, and that the petitioner is now aged about 65 years and suffering from various ailments. It is further pointed out that the petitioner is the only earning member of his family and that the incarceration in prison of the petitioner would, in effect, result in serious hardships and sufferings to his dependent family members.

12. It is true that the elapse of time is not a ground to trivialize the seriousness of a crime committed by the offender and to take a lenient view in the matter of

punishment. But, at the same time, the court is expected to consider the nature of the offence involved, and the conduct of the accused, before and after the commission of the crime. As far as the present case is concerned, it is revealed from the records that, immediately after the accident, the petitioner was at the forefront in taking the victim to the hospital and rendering him medical assistance. So also, the petitioner has not tried to evade the process of law or to desist from co-operating with the investigating agency. The prosecution is not having a case that the petitioner, though being a driver by profession, had been involved in any identical offences either before or after the present case. Taking into account the above facts and circumstances of the case, in the backdrop of the submission of the learned counsel for the revision petitioner about the age-related ailments and other frailties, I feel that the detention of the petitioner in prison has to be avoided, if he is prepared to abide by the terms and conditions imposed by this Court under relevant provisions of the Probation of Offenders Act, 1958.

13. It is true that the release of the offenders by invoking powers under Section 4 of the Probation of Offenders Act is rarely resorted to by courts when the offence involved is one under Sections 279 and 304A I.P.C. This is due to the reason that the high rise of road accidents throughout the nation has been causing great concern to the public including pedestrians and those who use vehicles as part of their daily life. However, in an appropriate case, where the litigation has been pending for decades, and the conduct of the accused is not tainted by the involvement in any similar offence either prior to the accident, or during the long period of court proceedings at various forums after the accident, there is absolutely no bar for invoking Section 4 of the Probation of Offenders Act, 1958 if the facts and circumstances of the case require such a measure to meet the ends of justice.

14. In **Paul George vs State of N.C.T. Of Delhi : 2008 (4) SCC 185**, wherein the accused was convicted and sentenced by the trial court for the offence punishable under Sections 279 and 304A I.P.C, and the case remained

for a period of about two decades, the Hon'ble Supreme Court has ordered the release of the accused under Section 4 of the Probation of Offenders Act, 1958. It has been observed by the Apex Court in paragraph 9 of that judgment as follows:

> *"This litigation has been going on for the last 20 years and has been fought tenaciously through various courts, we are also told that the appellant who has had a good career throughout but for this one aberration has since been dismissed from service on account of his conviction. We, therefore, while dismissing the appeal, feel that the ends of justice would be met if we direct that the appellant be released on probation under Section 4 of the Probation of Offenders Act, 1958 on conditions to be imposed by the Trial Court. The appeal is disposed of in the above terms."*

15. In **State through C.B.I., Anti Corruption Branch, Chandigarh v. Sanjiv Bhalla & Anr: 2015 (13) SCC 444**, the Apex Court, in paragraph 22 of the judgment, observed as follows:

> *"It does appear that depending upon the facts of each case, causing death by what appears (but is not) to be a rash or negligent act may amount to an offence punishable under Part II of Section 304 of the IPC, not*

warranting the release of the convict under probation. There may also be situations where an offence is punishable under Section 304-A of the IPC in an accident "where mens rea remains absent" and refusal to release a convict on probation in such a case may be too harsh an approach to take. An absolute principle of law cannot be laid down that in no case falling under Section 304-A of the IPC should a convict be released on probation.

This is certainly not to say that in all cases falling under Section 304-A of the IPC, the convict must be released on probation - it is only that the principles laid down in Sections 360 and 361 of the Criminal Procedure Code and the Probation of Offenders Act should not be disregarded but should be followed and an appropriate decision, depending on the facts of the case, be taken in each case."

16. Thus, there is absolutely no legal embargo in resorting to Section 4 of the Probation of Offenders Act, 1958 in cases where the accused are convicted and sentenced for the commission of an offence under Section 304A I.P.C, if the situation so warrants in view of the nature of the crime, stage of the case and the conduct of the accused prior to and after the incident. In the present case, where the accident took place in the year 2001, there are

absolutely no adverse circumstances pointing to the involvement of the accused in similar cases before the accident or after the accident. Having regard to the peculiar facts and circumstances of the case, discussed above, I find that the petitioner is liable to be released on probation of good conduct in exercise of the powers conferred under Sections 4, 5 and 11 of the Probation of Offenders Act, 1958.

17. In the result, while dismissing the revision petition, the petitioner is ordered to be released on probation of good conduct subject to the following conditions:

1. The petitioner shall appear before the Court of Chief Judicial Magistrate, Pathanamthitta on or before 15.12.2023 and execute bond for Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties each for the like amount to the satisfaction of the learned Magistrate to appear and receive the sentence imposed in this case by the said court, which has been upheld by the appellate court, when called upon during a period of three years from the

said date.

2. The petitioner shall, in the meantime, keep peace and good behaviour.
3. The petitioner shall, during the above period of three years, remain under the supervision of the District Probation Officer, Pathanamthitta, and render community service at the District Hospital, Pathanamthitta at least four days every month, starting from January 2024.
4. The District Probation Officer and the District Medical Officer, Pathanamthitta shall make necessary arrangements for assigning appropriate duty to the petitioner at the District Hospital, Pathanamthitta taking into account his condition of health, and shall ensure that the above direction of this Court is enforced.
5. The petitioner shall deposit an amount of Rs.10,000/- (Rupees ten thousand only) as compensation to the legal heirs of the deceased victim before the trial court on or before 30.12.2023.
6. Upon such deposit, the learned Chief Judicial Magistrate shall release the amount of compensation of Rs.10,000/- (Rupees ten

thousand only) to the legal heirs of the deceased Karunakaran after giving notice to them.

7. In the event of any default on the part of the petitioner in complying with the above directions, the District Probation Officer shall bring the said aspect to the notice of the learned Chief Judicial Magistrate, Pathanamthitta, who, if convinced about the above violation, shall proceed with the steps for enforcing the sentence imposed upon the petitioner.

Forward copies of this order to the District Probation Officer and District Medical Officer of Pathanamthitta, for ensuring compliance.

(sd/-)

G.GIRISH, JUDGE

jsr