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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

WEDNESDAY, THE 8TH DAY OF OCTOBER 2025 / 16TH ASWINA, 1947

CRL.REV.PET NO. 1438 OF 2017

AGAINST THE JUDGMENT OF CONVICTION AND SENTENCE PASSED IN CC NO.753 OF 2011 DATED 29.7.2015 ON THE FILE OF THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE, CHITTUR AS CONFIRMED IN THE JUDGMENT IN Crl.A NO.229 OF 2015 DATED 29.7.2017 ON THE FILE OF THE COURT OF THE ADDITIONAL SESSIONS JUDGE - IV, PALAKKAD

REVISION PETITIONER/APPELLANT/2ND ACCUSED:

SELVAN
AGED 46 YEARS
S/O. CHENNIAPPAN, DOOR NO. 7B/81,
GIRIKOLUTHIGRAMEM, SARKAR PALAYAM, POLLACHI.

BY ADVS.
SRI.SAIJO HASSAN
SRI.BENOJ C AUGUSTIN
SRI.U.M.HASSAN
SMT.P.PARVATHY
SHRI.RAFEEK. V.K.
SRI.VISHNU BHUVANENDRAN

RESPONDENT/RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

ADV.SRI.U.JAYAKRISHNAN - PP

THIS CRIMINAL REVISION PETITION HAVING BEEN COME UP FOR HEARING ON 08.10.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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ORDER

Under challenge in this Criminal Revision Petition is the conviction and sentence rendered against the revision petitioner/2nd accused under Sections 457, 380 read with 34 IPC.

2. The revision petitioner is the 2nd accused in C.C.No.753 of 2011 on the files of the Judicial First Class Magistrate Court, Chittur. He along with two other accused stood trial before that Court for committing the offences punishable under Sections 457 and 380 read with 34 IPC.

3. The prosecution case is that on 14.03.2011 at about 11.00 p.m, the accused in furtherance of their common intention to commit theft, broke into the Beverages Corporation situated at Menonpara and thereafter, committed theft of 52.750 litres of Indian Made Foreign Liquor, worth Rs.24,515/-.

4. The trial court, on an elaborate appreciation of the evidence on record, found the 2nd and 3rd accused guilty of committing the offences punishable under Sections 457 and 380 read with 34 IPC

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and convicted them thereunder. It sentenced the accused to undergo simple imprisonment for a period of three years each and to pay a fine of Rs.1,000/- each, under Section 457 read with 34 of IPC, with a default clause and to undergo simple imprisonment for a period of three years each and to pay a fine of Rs.1,000/- each, under Section 380 read with 34 of IPC, with a default clause.

5. The 2nd accused carried the matter in appeal by filing Crl. Appeal No.229 of 2015 before the Additional Sessions Court-IV, Palakkad. The said Court by judgment dated 29.07.2017 dismissed the appeal.

6. Heard Sri.Sangeeth, the learned counsel appearing for the revision petitioner and Sri.U.Jayakrishnan, the learned Public Prosecutor. Perused the records.

7. The records show that the prosecution in order to bring home the guilt of the accused has examined PW1 to PW8 and has marked Exts.P1 to P7 documents and MO1 and MO2. The evidence of PW1, the Manager of the Beverages outlet at Menonpara who has given the First Information Statement, shows that he closed the shop at 9.30 p.m. on 14.03.2011 by using six locks and on the next day

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when he came to the shop at about 9.00 a.m., found the locks broken. He went inside the shop and upon verifying the stock, found that bottles of Indian Made Foreign Liquor were missing. He immediately informed this to the Police and filed Ext.P1 FIS. He also identified the broken locks as MO1 series. Through him Ext.P2 series - the label statements sent from the warehouse at Palakkad were also marked. It is to be seen that the evidence of PW2, a worker in the shop also corroborates with the evidence of PW1 regarding these aspects. From the evidence of these witnesses, it can be seen that even though, they have spoken to about the theft, they have not seen the commission of the crime.

8. The records show that the prosecution is heavily relying upon the recovery effected, based upon the confession given by the accused to rope him in this case. The evidence of PW4 would go to show that on 15.03.2011 he had arrested all the three accused and has questioned them. His evidence in to the effect that on the basis of Ext.P7(a) confession he has recovered 83 bottles of Indian Made Foreign Liquor. But it is very pertinent to note that PW4 not deposed the exact information, he had allegedly received from the accused and

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which led to the recovery. The information deposed by PW4 do not tally with Ext.P7(a) information which he has allegedly recorded. It is a settled law as held by the Apex Court in the decision in ***Bodh Raj vs. State of Jammu Kashmir (AIR 2002 SC 3164)*** that in order to rely upon a recovery effected under Section 27 of the Indian Evidence Act, the prosecution is duty bound to prove the alleged information received from the accused while in custody, which led to the recovery. The investigating officer must record the information and prove it or if not recorded, prove the exact information he had received from the accused by deposing in the Court. In the instant case, in the absence of the prosecution proving the alleged information received from the accused, I have no doubt in my mind that no value can be attached to the recovery evidence.

9. Another important aspect which comes to fore in this case is the impossibility of the fact that all the three accused together have given information in the form of Ext.P7(a). It is quite impossible to believe that all these accused have spoken simultaneously and in one voice. As held by the Hon'ble Apex Court in the decision in ***Mohd. Abdul Hafeez v. State of A.P. (1983 KHC 413)***, if evidence otherwise

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confessional in character is admissible under S.27 of the Indian Evidence Act, it is obligatory upon the investigating officer to state and record who gave the information; when he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against the person. In the instant case, the version of PW4 is that when he questioned all the three accused, he received the very same information ie; Ext.P7(a) and the exact information given by each of the accused has neither been recorded nor proved. If so, the information allegedly received from all the accused cannot be used to connect the 2nd accused.

10. Be that as it may, it is further to be seen that the conviction of the accused is solely based upon the recovery evidence alone and nothing more. It is a settled law as held by the Honourable Apex Court in ***Manoj Kumar Soni v State of MP [2023 SCC OnLine SC 984]*** that a disclosure statement is not so strong a piece of evidence which is sufficient on its own and without anything more, to bring home the charges against the accused beyond reasonable

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doubt. Similarly, in the decision in ***Varkey C.V. v State of Kerala [2024 KHC 7096]***, this Court has categorically held that mere recovery of the weapon of offence on the basis of the information received from the accused, is of no use if there is no other evidence which could be taken as a connecting link about the use of the said weapon for the commission of the crime. That apart, recently in the decision in ***Abdul Jabbar v State of Kerala [2025 KHC OnLine 901]***, this Court has again held that while recovery under Section 27 can be a crucial piece of evidence, it cannot be the sole basis for conviction since, it is not a substantive evidence and needs to be corroborated by other evidence. If so, in the light of the afore discussions, I am of the view that the conviction and sentence rendered against the revision petitioner/2nd accused cannot be sustained.

In the result, this Criminal Revision Petition is allowed as follows:

(i) The conviction and sentence rendered against the revision petitioner/2nd accused under Sections 457 and 380 read with 34 IPC in C.C. No.753 of 2011 by the Judicial First Class Magistrate, Chittur and as confirmed in Crl. Appeal No.229 of 2015 by the Additional

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Sessions Court-IV, Palakkad, are set aside.

(ii) The revision petitioner/2nd accused is set at liberty.

Sd/-

P. V. BALAKRISHNAN
JUDGE

MC