2025:KER:61858

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 13TH DAY OF AUGUST 2025 / 22ND SRAVANA, 1947

CRL.REV.PET NO. 1604 OF 2006

AGAINST THE JUDGMENT DATED 29.3.2006 IN Crl.A NO.11 OF 2005 OF SESSIONS COURT, KOZHIKODE ARISING OUT OF THE JUDGMENT DATED 20.12.2004 IN CC NO.172 OF 2002 OF JUDICIAL MAGISTRATE OF FIRST CLASS, VADAKARA

REVISION PETITIONER/APPELLANT/ACCUSED NO.1:

ABDUL JABBAR, AGED 25 YEARS, S/O MUHAMMED, KANDAN MALAYIL HOUSE, NADAKKUTHAZHE VILLAGE, PUTHUPPANAM (POST), VADAKARA, KOZHIKODE DISTRICT.

BY ADV SHRI.SUNNY MATHEW

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA THROUGH THE
SUB INSPECTOR OF POLICE, VADAKARA POLICE STATION,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM.

SRI.E.C.BINEESH-SR.PP

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 13.08.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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ORDER

The petitioner is the accused No.1 in C.C. No. 172/2002, on the files of the Judicial First-Class Magistrate Court-I, Vadakara (for short, 'the trial court'). He, along with the accused No.2, faced trial for the offence punishable under Section 379 read with Section 34 of the IPC. However, when the case was posted to question the accused under Section 313 of Cr. P.C., the accused No.2 absconded. The case against him was split up and refiled as C.C.No.913/2004.

2. The prosecution case in short is that on 11.11.2001 at about 9.45 pm, while the defacto complainant and his wife were returning to their house after seeing a movie through Vadakara-Villyapalli public road, both the accused came in an autorickshaw and one of them in furtherance of their common intention, snatched MO1 and MO2 series gold ornaments worn by the wife of the defacto complainant and fled away in the same autorickshaw.

3. PW1 to PW11 were examined and Exts.P1 to P5 were marked on the side of the prosecution. MO1, MO2 and MO2(a) were identified. Ext.D1 series were marked on the side of

the defence. After trial, the trial court found that the petitioner is guilty of the offence punishable under Section 379 read with Section 34 of the IPC, and he was convicted for the said offence. He was sentenced to undergo rigorous imprisonment for two years. The petitioner challenged the conviction and sentence of the trial court before the Sessions Court, Kozhikode (for short, 'the appellate court'), in Crl.A.No.11/2005. The appellate court dismissed the appeal. This revision petition has been filed challenging the judgments of the trial court as well as the appellate court.

4. I have heard Smt.Bhavana, the learned counsel for the petitioner and Sri. E.C. Bineesh, the learned Senior Public Prosecutor.

5. The learned counsel for the petitioner submitted that there is no legal evidence on record to show that it was the petitioner who snatched the gold ornaments worn by the wife of the de facto complainant. The learned counsel further submitted that the conviction was based solely on the evidence regarding the recovery of MO1, MO2 and MO2(a) gold ornaments, and the said recovery has not been legally proved. The learned counsel also submitted that in the absence of substantive evidence to connect the petitioner with the crime, the conviction based on

evidence regarding the recovery under Section 27 of the Evidence Act and drawing a presumption under Section 114(a) of the Evidence Act is bad. On the other hand, the learned Senior Public Prosecutor supported the findings and verdict handed down by the trial court and the appellate court and argued that the prosecution had succeeded in proving the case beyond a reasonable doubt.

6. PW2 is the de facto complainant. Ext.P1, the FI statement was marked through him. PW1 is the wife of the de facto complainant. Both gave evidence that while they were returning to their home after seeing a movie, two people came in an autorickshaw and snatched the gold ornaments worn by PW1. Those gold ornaments were identified by them as MO1 and MO2 series. There is nothing to disbelieve the version of PW1 and PW2 that MO1 and MO2 series gold ornaments belong to PW1, and they were snatched away by two people who came in an autorickshaw on the alleged date and time of the incident. But the crucial question is whether the evidence adduced by the prosecution is sufficient to hold that it was the petitioner who snatched away MO1 and MO2 series gold ornaments worn by PW1.

7. The trial court found that PW1 and PW2 did not identify the petitioner or the accused No.2 at all. The said finding

was confirmed by the appellate court. In Ext.P1 FI statement, PW2 categorically stated that he could not identify any of the persons in the autorickshaw. He could not notice the number of the autorickshaw. No test identification was also conducted. The petitioner or the accused No.2 was not shown to PW1 and PW2 during the investigation. Hence, the trial court found that the evidence of PW1 and PW2 is not sufficient to prove that it was the petitioner, along with the accused No.2 snatched MO1 and MO2 series gold ornaments belonging to PW1. However, the trial court and the appellate court relying on the evidence regarding the recovery of the gold ornaments pursuant to the confession statement given by the petitioner while in police custody under Section 27 of the Indian Evidence Act and also drawing the presumption under Section 114(a) of the Evidence Act, found the petitioner guilty of the offence.

8. There are two sets of recoveries. To prove the recovery of MO1 Thali chain, the prosecution relied on the evidence of PW10, PW4, PW5 and PW6. To prove the recovery of MO2 golden balls and MO2(a) black pearls, the prosecution relied on the evidence of PW7 and PW10. PW10 deposed that on his arrest, the petitioner confessed that MO1 gold chain was sold by him at the jewellery shop belonging to PW4, and if he was taken

there, he would show MO1 gold chain. Accordingly, he, along with the petitioner, went to the jewellery shop of PW4 and seized MO1 as shown by the petitioner. Seizure mahazar was marked as Ext.P3. PW5 and PW6 are witnesses of Ext.P3. PW5 and PW6 deposed about the seizure of MO1 from the shop of PW4 by PW10 as per Ext.P3 mahazar. They have also identified their signature in Ext.P3. PW4, the owner of the jewellery, deposed that the petitioner came to his shop and sold MO1 Thali chain. Thus, the recovery of MO1 pursuant to the confession statement made by the petitioner while in police custody stands proved from the evidence of PW4, PW5, PW6 and PW10. The second recovery pertains to MO2 and MO2(a). PW10 deposed that while in police custody, the petitioner gave another statement that he sold MO2 and MO2(a) at the shop of PW7, and if he was taken there, he would show MO2 and MO2(a). Accordingly, as led by the petitioner, PW1, along with him, went to the shop of PW7 and seized MO2 and MO2(a) shown by the petitioner as per Ext.P4 mahazar. PW7, the owner of the shop, deposed that the petitioner came to his shop and sold MO2 and MO2(a). Even though PW8, the attestor to Ext.P4 mahazar, did not support the prosecution case, the recovery of MO2 and MO2(a) stands proved from the evidence of PW7 and PW10. The recovery of MO1, MO2

and MO2(a) pursuant to the confession statement given by the petitioner while in police custody is admissible under Section 27 of the Act, as rightly held by the trial court and affirmed by the appellate court. But the question is whether the said evidence alone is sufficient to connect the petitioner with the crime.

9. While recovery under Section 27 of the Act can be a crucial piece of evidence, it cannot be the sole basis for conviction. It is not substantive evidence. It needs to be corroborated by other evidence to establish guilt beyond a reasonable doubt. Recently, the Supreme Court in **Manoj Kumar Soni v. State of Madhya Pradesh** (AIR 2023 SC 3857) considered the question – can disclosure statements *per se*, unaccompanied by any supporting evidence, be deemed adequate to secure a conviction?. It was held that although disclosure statements hold significance as a contributing factor in unriddling a case, they are not so strong a piece of evidence sufficient on their own and without anything more to bring home the charges beyond a reasonable doubt.

10. The learned Senior Public Prosecutor submitted that even though the evidence regarding recovery as such cannot be used against the petitioner to prove his guilt, the evidence of PW4 and PW7 would show that the petitioner was in possession of

MO1, MO2 and MO2(a) soon after the theft and hence he can be convicted under Section 411 of IPC at least in the absence of any explanation on his part as to how those material objects came in his possession. It is further submitted that Section 411 being a lesser offence to Section 379, conviction under the said provision is permissible even without a charge. Reliance was placed on **Nazir v. State** (2002 KHC 2840). It was held in the above decision that when the recovery of the stolen article was effected from the house of the accused consequent to his confession statement, the conviction under Section 411 of IPC is permissible. However, the Supreme Court in **Manoj Kumar Soni** (supra) has also held that a presumption of fact under Section 114(a) of the Evidence Act must be drawn considering other evidence on record and without corroboration from other cogent evidence, it must not be drawn in isolation. It was further held that solely relying on the disclosure statement made by the accused, conviction under Section 411 of IPC is also not permissible.

11. For these reasons, I hold that the conviction of the petitioner based on the evidence regarding recovery under Section 27 of the Evidence Act and drawing presumption under Section 114(a) of the Evidence Act alone cannot be sustained. Accordingly, the impugned conviction and sentence are hereby set

aside. The petitioner/accused No.1 is found not guilty for the offence charged against him and he is acquitted.

Criminal revision petition is allowed.

sd/-
DR. KAUSER EDAPPAGATH
JUDGE

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