2024:KER:81929

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

TUESDAY, THE 5TH DAY OF NOVEMBER 2024 / 14TH KARTHIKA, 1946

CRL.REV.PET NO. 1160 OF 2016

CRA NO.351 OF 2014 OF I ADDITIONAL SESSIONS COURT, THIRUVANANTHAPURAM

[CC NO.232 OF 2013 OF JUDICIAL MAGISTRATE OF FIRST CLASS-V, THIRUVANANTHAPURAM (SPECIAL COURT-MARKLIST CASES]

REVISION PETITIONER/APPELLANT/ACCUSED

PADMAKUMAR,AGED 54 S/O. SUKUMARAN, KARIYARAVILA VEEDU, KARATHIKONAM, SANTHIPURAM DESOM, ULIYAZHTHURA VILLAGE.

BY ADVS.
SRI.S.V.PREMAKUMARAN NAIR
SMT.M.BINDUDAS
SRI.R.T.PRADEEP

RESPONDENT/RESPONDENT/STATE

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM-682031

SMT.MAYA M.N. - PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30.10.2024, THE COURT ON 05.11.2024 DELIVERED THE FOLLOWING:

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C.R.

ORDER

[Crl.Revision Petition No.1160 of 2016]

Dated : 5th November, 2024

This Revision Petition is filed by the appellant in Crl.Appeal No.351/2014 on the file of the Additional Sessions Judge-I, Thiruvananthapuram, against the judgment partly allowing the said appeal and thereby confirming the conviction under Section 323 IPC passed by the Judicial First Class Magistrate-V, (Special Court for mark list cases), Thiruvananthapuram, in C.C.No.232/2013.

2. The trial court framed charge against the accused under Sections 341, 294(b), 447 and 332 IPC. The prosecution case is that the accused who was a driver in the CBCID Office, Jawahar Nagar Unit, under the mistaken notion that the de-facto complainant, a Grade Sub Inspector, was behind his transfer to Kollam unit, with the intention to wreck vengeance against him, entered the car porch area at the office on 31.5.2012 at 9.45 a.m, used abusive words at the de-facto complainant, caught hold of his shirt and hit on his left cheek. On the basis of the evidence on record, namely, the oral testimony of PWs1 to 8 and Exts.P1 to P5, the trial court found him guilty under Sections 341 and 323 IPC and found him not guilty of the remaining offences. In

appeal, the Additional Sessions Judge-I, Thiruvananthapuram, confirmed the conviction under Section 323 IPC alone and acquitted him of the offence under Section 341 IPC. Dissatisfied with the above finding of the appellate court, he preferred this Revision raising various grounds.

3. Heard Adv.Sri.R.T.Pradeep the learned counsel for the revision petitioner and Smt.Maya M.N., the learned Public Prosecutor.

4. In the light of the arguments advanced, the following points are raised for consideration:-

1. Whether an accused charged under section 332 IPC can be punished for the offence under Section 323 IPC?

2. In order to prove the offence under S.323 IPC, whether proof of causing bodily pain, disease or infirmity to any person is necessary?

3. Whether the impugned judgment of conviction passed by the trial court as confirmed by the appellate court is liable to be interfered with, in the light of the grounds raised in the Revision Petition ?

5. Point No.1:- Now the only head under which the revision

petitioner was convicted is under Section 323 IPC, as he was already acquitted of all the remaining charges, either by the trial court or by the appellate court. One of the contentions raised by the learned counsel is that in the absence of separate charge under section 323 IPC, the accused cannot be punished for that offence. It appears that since the original charges against the accused included one under section 332 IPC also, the learned Magistrate tried the case as a warrant trial case and a court charge was framed under sections 341, 294(b), 447 and 332 IPC. It was in the above context, such an argument was advanced by the leaned counsel.

6. However, it is to be noted that, the above argument has no legs to stand, in the light of Section 222 Cr.PC. Section 222 Cr.PC states that:

> *"When offence proved included in offence charged*
>
> *(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.*
>
> *(2) When a person is charged with an offence and facts are proved which reduce it to minor offence, he may be convicted of the minor offence, although he is not charged with it.*
>
> *(3) When a person is charged with an offence, he may be*

convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied. "

7. In the decision in **S.M.Multtani v. State of Karnataka,** (2001)2 SCC 577, the Apex Court while discussing the scope of section 222 Cr.PC held in paragraph 15 that:

"15. Section 222(1) of the Code deals with a case "when a person is charged with an offence consisting of several particulars". The section permits the court to convict the accused "of the minor offence, though he was not charged with it". Sub-section (2) deals with a similar, but slightly different situation.

222. (2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it."

8. What is meant by "a minor offence" for the purpose of S.222 of the Code was dealt with by the court in paragraph 16 as follows:

16. What is meant by "a minor offence" for the purpose of S.222 of the Code ? Although the said expression is not defined in the

> *Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis-a-vis the other offence.* "

9. Section 323 IPC provides punishment for voluntarily causing hurt, while section 332 provides punishment for voluntarily causing hurt to deter a public servant from his duty. Both the offences contain the ingredients of the offence of 'voluntarily causing hurt'. The punishment for the offence under section 332 IPC is imprisonment of either description for a term which may extend to three years, or with fine, or with both. The punishment for the offence under section 323 IPC is imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

10. When viewed in the light of the above dictum, it can be seen that, the offence under Section 323 IPC is a minor offence, when compared to the offence under Section 332 IPC. In the above circumstance, in this case, even though there is no separate charge under Section 323 IPC, there is nothing wrong in convicting the accused for the aforesaid offence, provided the

prosecution succeeds in proving the aforesaid offence. Point No.1 answered accordingly.

11. Point No.2:- Now let us see whether in this case the prosecution has succeeded in proving the offence punishable under section 323 IPC. With respect to the offence under Section 323 IPC, the prosecution case is that the accused hit on the left cheek of the de facto complainant. The trial court as well as the appellate court relied upon the evidence of PWs 2 and 3 to prove the offence under Section 323 IPC.

12. The learned counsel for the revision petitioner would argue that even if the evidence adduced by the de facto complainant as PW2 as such is accepted in it's face value, the same will not constitute the offence of 'hurt' as defined under Section 319 IPC. Therefore, according to him, on that ground itself the revision petitioner is entitled to get an order of acquittal. Accordingly, he prayed for acquitting the accused by allowing this Revision Petition. On the other hand, the learned Public Prosecutor pressed for dismissing the Revision Petition.

13. When the de facto complainant was examined as PW2, he deposed that on 31.5.2012 he was working as Grade Sub Inspector and at about 9.30 a.m. he was standing at the car porch in the office. At that time, the

accused caught hold on his shirt and slapped on his left cheek and thereby his spectacle fell down on the floor. He was taken to the General hospital by his colleagues. At the time of evidence, PW2 has not specifically stated that, because of the above act of the accused, he felt bodily pain, disease or infirmity. It was in the above circumstance, the learned counsel for the accused argued that the evidence of PW2, even if accepted as such, does not amount to 'hurt' as defined under Section 319 IPC.

14. Section 319 IPC defines the term 'hurt' as follows:

> *"Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt."*

15. Section 321 IPC defines the terms "voluntarily causing hurt" as follows :-

> *"Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".*

16. In the decision in **Reji v. State of Kerala,** 2021 KHC 542, while considering the scope of section 319 IPC, a learned Single Judge of this court held in para 25 that:

> *".....It is not in dispute that in order to prove an*

> *offence under S.323 IPC (voluntary causing hurt), causing bodily pain, disease or infirmity to any person as defined under S.319 of IPC are to be established. Here the available evidence is confined to a scuffle between Reji and Peethambaran, but bodily pain, disease or infirmity to Peethambaran in consequence thereof were not proved by the prosecution...."*

17. Therefore, as argued by the learned counsel for the revision petitioner, in order to bring an act within the definition 'hurt', the same should cause bodily pain, disease or infirmity to any person. If so, in order to prove the offence under S.323 IPC, the prosecution has to necessarily prove that the act complained of has also caused bodily pain, disease or infirmity to any person. Point No.2 answered accordingly.

18. Point No.3:- PW2 has deposed before the court only to the effect that, the accused slapped on his cheek. He has not specifically stated that the above act of the accused has caused bodily pain, disease or infirmity to him. In this context it is also to be noted that PW3, the Assistant Surgeon, General hospital, Thiruvananthapuram, who had examined PW2 and issued Ext.P2 wound certificate has not seen any injuries on the body of PW2. In the absence of any evidence to prove that the act of the accused has caused bodily pain, disease or infirmity to PW2, it is to be held that the prosecution has not

succeeded in proving that the act of the accused amounted to voluntarily causing hurt, as defined under section 321 IPC.

19. In the above circumstances, it is to be held that the prosecution has not succeeded in proving the offence under section 323 IPC against the revision petitioner. Accordingly, the impugned judgment of the Additional Sessions Judge, Thiruvananthapuram, confirming the conviction under Section 323 IPC against the revision petitioner is liable to be set aside. The point answered accordingly.

20. In the result, this Revision Petition is allowed. The impugned judgment of the Additional Sessions Judge, Thiruvananthapuram in Crl.Appeal 351/2014, confirming the conviction of the revision petitioner under Section 323 IPC is set aside. The revision petitioner is acquitted under Section 386(b)(i) of Cr.P.C. He is set at liberty cancelling his bail bond.

Sd/-

C.Pratheep Kumar, Judge

Mrcs/1.11