

HIGH COURT OF KERALA**Bench: Justice P.G. Ajithkumar****Date of Decision: 8th November 2023**

CRL.REV.PETITION NO. 1065 OF 2023

AGAINST THE ORDER DATED 31.07.2023 IN CMP 680/2022 IN SC 1134/2017 OF THE PRINCIPAL ASSISTANT SESSIONS COURT, THRISSUR

(CRIME NO.1035/2015 OF PERAMANGALAM POLICE STATION, THRISSUR)

REVISION PETITIONER/ACCUSED:**GIRIJA****Versus****RESPONDENTS/RESPONDENTS:**

- 1 **STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
PIN – 682031.**
- 2 **STATION HOUSE OFFICER,
PERAMANGALAM POLICE STATION, PIN – 680545.**

SMT SEENA C., PUBLIC PROSECUTOR**Legislation:**

Section 227, 397, 401 of the Code of Criminal Procedure, 1973 (CrPC)

Sections 328, 448, 461, 390, 392, 394 and 397 of the Indian Penal Code, 1860 (IPC)

Subject: Criminal Revision Petition challenging the dismissal of a discharge petition under Section 227 of the CrPC, with a reevaluation of the applicable sections of the IPC for the offences charged.**Headnotes:**

Criminal Revision Petition – Seeking Discharge Under Section 227 of CrPC – Rejection by Principal Assistant Sessions Judge, Thrissur – Revision Petitioner/Accused files petition challenging dismissal. [Para 1]

Offences Charged – Accused charged under Sections 448, 461, 392, and 397 IPC – Trial court cognizance for offences under Sections 448, 461, 328, and 397 IPC – Accused's plea for reevaluation of charges under Section 392 IPC dismissed by lower court. [Para 3]

Prosecution Allegations – Accused allegedly administered poisonous substances to victims for theft – Theft of gold ornaments following victims' incapacitation – Allegations align with definition of robbery under Section 390 IPC. [Para 4]

Legal Analysis – Differentiating between simple robbery under Section 392 IPC and aggravated forms under Sections 394 and 397 IPC – Consideration of nature of hurt caused to victims in determining applicable sections. [Para 5-6]

Expert Testimony – Witness accounts and expert opinion indicating administration of poisonous substances to victims, leading to prolonged hospitalization – Prima facie evidence suggesting attempt to cause death, categorizing offence under Section 397 IPC. [Para 7]

Charge Framing – Necessity for clarity and specificity in charges – Recommendation to frame charges under Sections 448, 461, 328, and 397 IPC only. [Para 8]

Decision – Modification of impugned order – Charges against petitioner to be framed for offences under Sections 448, 461, 328, and 397 IPC. [Para 9]

Referred Cases: None.

Representing Advocates:

For the Revision Petitioner/Accused: Adv Lavaraj M.G.

For the Respondents: Smt Seena C., Public Prosecutor

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR FINAL HEARING ON 06.11.2023, THE COURT ON 08.11.2023 DELIVERED THE FOLLOWING:

ORDER

The revision petitioner is the accused in S.C.No.1134 of 2017 on the file of the Principal Assistant Sessions Judge, Thrissur. He filed C.M.P.No.609 of 2022 under the provisions of Section 227 of the Code of Criminal Procedure, 1973 (Code), seeking discharge. The court below dismissed that petition on 31.07.2023. Being aggrieved, this Revision Petition is filed under Section 397 read with Section 401 of the Code.

2. Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor.

3. The offences alleged against the petitioner in the final report are punishable under Section 448, 461, 392 and 397 of the Indian Penal Code, 1860 (IPC); whereas the court took cognizance for the offences under Sections 448, 461, 328 and 397 of the IPC. The petitioner filed C.M.P.No.609 of 2022 setting up a plea that the offence in which the materials produced by the prosecution would reveal an offence under Section 392 of the IPC and not one under Section 397 of the IPC. The court below, after considering the materials on record and hearing both sides, held that there are enough materials to substantiate that the petitioner is presumed to have committed the offences punishable under Sections 448, 461, 392, 394 and 397 of the IPC. The petition was accordingly dismissed. The learned counsel appearing for the petitioner would submit that the alleged act of the accused that she administered poisonous liquid to witness Nos.2 and 3 making them unconscious for the purpose of her committing theft, would amount to an offence punishable under Section 392 of the IPC alone. The said submission is countered by the learned Public Prosecutor by submitting that the petitioner

administered poisonous liquid resulting witness Nos.2 and 3 to undergo treatment for days together and there was every possibility of causing thereby their death and therefore the questionable act would amount to an offence punishable under Section 397 of the IPC.

4. The precise allegation of the prosecution is that on 28.06.2015 between 9.30 and 10.30 a.m. the accused reached the house of witness Nos.2 and 3 on some pretext and in order to commit theft of valuable articles, she administered poisonous liquid containing Alprazolam and Benzodiazepine, resulting them fell unconscious. It was thereafter, she stole the gold ornaments belonging to the said witnesses. She allegedly had stolen gold ornaments from inside the almira kept in the house where the witnesses are residing. The said allegations certainly would amount to robbery as defined in Section 390 of the IPC. The circumstance where a theft amounts to robbery as delineated in Section 390, which reads,-

When theft is robbery.—Theft is “robbery” if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint. For the purpose of appreciating the contentions of the learned counsel for the petitioner Sections 392, 394 and 397 of the IPC are extracted below:-

392. Punishment for robbery.— Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

394. Voluntarily causing hurt in committing robbery.—If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with¹[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. 397.

Robbery, or dacoity, with attempt to cause death or grievous hurt.—If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

5. Every robbery is punishable under Section 392 of the IPC. The offence described in Sections 394 and 397 of the IPC are the aggravated forms of robbery, for which different punishments are prescribed. If the offender commits robbery and in that course, he voluntarily causes hurt to the victim, the offence is punishable under Section 394 of the IPC. If the offender, *inter alia*, causes grievous hurt to or attempts to cause death of or grievous hurt to the victim while committing robbery that amounts to an offence punishable under Section 397 of the IPC.

6. The question here is whether the materials produced by the prosecution reveal that the petitioner caused only a simple hurt, or whether she caused grievous hurt or she attempted to cause death.

7. The prosecution has cited witness Nos.21 to 24 to prove the nature of hurt sustained by witness Nos.2 and 3 and also the poisonous material administered to them. In the opinion of witness No.23 what administered on witness Nos.2 and 3 was some poisonous material. The expert opinion revealed that the material administered contained Alprazolam and Benzodiazepine and by consuming the said material both witness Nos.2 and 3 fell unconscious and had to undergo continuous inpatient treatment; the second witness was an inpatient for 10 days. From the said facts and circumstances, what *prima facie* can be found is that there was an attempt to cause death of the victims. Therefore, when she committed theft after administering liquid containing poisonous materials on witness Nos.2 and 3 is one punishable under Section 397 of the IPC. Since the offence under Section 397 of the IPC is the aggravated form of the offence 'robbery', it takes in the ingredients of offences under Sections 392 and 394 of the IPC. Therefore, the charge needs to contain the offence under Section 397 of the IPC alone.

8. Going by the provisions of Section 222 of the Code, when a person is charged with an offence consisting of several particulars, a

combination of some only of which constitute a complete minor offence, and such combination is proved, the offender can be convicted for the minor offence, though he was not charged with such minor offence. Since the offence under Sections 392 and 394 are minor offences of the offence under Section 397, the charge need contain the offence under Section 397 of the IPC only. Although inclusion of the offence under Sections 392 and 394 of the IPC also in the charge would not make the charge illegal altogether, I am of the view that for clarity and specificity, the court below needs to frame a charge under Sections 448, 461 and 397 of the IPC alone. Besides, the reason to cause infirmity to the victims being administration of poison to them, the offence under Section 328 of the IPC is also attracted. The impugned order is interfered with to that extent.

9. Accordingly, this Revision Petition is disposed of and the impugned order is modified to the effect that the charge against the petitioner shall be for the offences punishable under Sections 448, 461, 328 and 397 of the IPC.

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