

IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION

MISCELLANEOUS APPLICATION NO. 1963/2019
IN
MISCELLANEOUS APPLICATION DIARY NO.23667/2019
AND
REVIEW PETITION (CRL.) DIARY NO.40711/2019
IN
SPECIAL LEAVE PETITION (CRL.) NO.3888 OF 2019

ASOKAN & ORS.

PETITIONER(S)

VERSUS

THE STATE OF KERALA

RESPONDENT(S)

O R D E R

REVIEW PETITION (CRL.) DIARY NO.40711/2019

1. Delay in filing the review petition is condoned.
2. In the peculiar facts of the present case, this review petition has been heard in open Court pursuant to order dated 08.01.2020 passed by this Court in Miscellaneous Application No.1963 of 2019.
3. The petitioners herein were tried and convicted for the offences under Sections 457, 461 and 380 read with 34 I.P.C. for committing house breaking to the residential quarters of the complainant and theft of two watches, two gold rings and two pairs of ear-rings. They were awarded varying

sentences including that of rigorous imprisonment for one year each and a fine of Rs.2,000/- each for the offences under Sections 457 and 380 I.P.C. and six months' rigorous imprisonment each for the offence under Section 461 I.P.C. Their conviction and sentences were maintained by the Court of Sessions in Criminal Appeal No.139/2007.

4. However, while dealing with the criminal revision petition preferred by the petitioners, in its order dated 23.01.2018, the High Court of Kerala was of the opinion that the ingredients of Section 457 I.P.C. were not established and the conviction in that regard was altered to that for the offence under Section 454 I.P.C.

5. The High Court also noticed that there was nothing on record to show that the petitioners were habitual offenders nor any other crime was reported against them. In the totality of the circumstances, the High Court altered the conviction and reduced the sentence while observing as under :

"xxx xxx xxx

Now the question of sentence. There is nothing to show that the revision petitioners are habitual offenders. It is

not known whether there is any other crime against them or whether there is any other conviction to their credit. In such a situation, I feel that imprisonment for six months will be adequate sentence in this case.

xxx

xxx

xxx"

6. The petitioners attempted to question the order so passed by the High Court in SLP (Cr1.) Diary No.36616/2018 [Now SLP (Cr1.) No. 3888 of 2019], essentially on the grounds that the prosecution had not been able to adduce the proof beyond reasonable doubt; and that on the date of commission of crime, petitioner No.1 was 22 years of age, whereas the other petitioners were 21 years of age and looking to the nature of conviction, the Courts ought to have considered the application of the provisions of Probation of Offenders Act, 1958.

7. The said petition was considered by this Court on 22.04.2019. Even while delay in filing was condoned, the petition was, however, dismissed *in limine*.

8. It is submitted, particularly with reference to the observations occurring in the order passed by

the High Court and the surrounding factors, that it is a fit case for review of the order dated 22.04.2019. Learned counsel for the petitioners has made a fervent plea for consideration of the case of the petitioners under the Probation of Offenders Act. It is also submitted that *de facto* complainant, having already received her articles has, in fact, pardoned the petitioners and has even agreed for compounding of the offences in her affidavit dated 12.06.2019, which has been filed as Miscellaneous Application Diary No.23667/2019. The learned counsel has also referred to the facts that all the petitioners had been earning their livelihood while working as head-load worker or helper or coolie without being involved in any crime; that the petitioner No.1 has suffered cardiac arrest in the year 2017 and is regularly under treatment; and that the petitioner No.2 got an appointment in the year 2012 in the Indian Railways as helper. While pointing out that the petitioners have already undergone nearly three months of imprisonment and the case is not involving any offence of heinous nature or of moral turpitude, the learned counsel would contend that the alleged incident could only be referred to

the youthful indiscretion on the part of petitioners rather than depravity.

9. Learned counsel for the respondent-State though has attempted to oppose but could not dispute the factors and circumstances indicated on behalf of the petitioners.

10. Having heard learned counsel for the parties and having examined the matter in its totality, we are not persuaded to consider the application of Probation of Offenders Act in this matter now and at this stage, particularly when conviction of the petitioners, *inter alia*, relates to offence under Section 454 I.P.C. i.e., house-breaking in order to commit theft. We are also not persuaded to consider granting prayer for compounding at this stage of the proceedings in relation to the aforesaid non-compoundable offences.

11. However, considering that all the other relevant aspects did not occur in their fuller exposition earlier; and looking to the peculiar facts, factors and circumstances concerning this case coupled with the fact that the petitioners have already undergone substantial sentence period, in our view, in order to do complete justice in the matter,

it would be just and proper to review the order dated 22.04.2019 and to modify the sentence awarded to each of the petitioners to that of the period already undergone.

12. Accordingly, this review petition is allowed; the order dated 22.04.2019 is recalled; and while granting leave in Special Leave Petition (Cr1.) No.3888 of 2019, the order dated 23.01.2018 in Criminal Revision Petition No.3534/2008 as passed by the High Court of Kerala is modified with reduction of sentence awarded to each of the petitioner to that of the period already undergone. They be released forthwith.

MISCELLANEOUS APPLICATION NO. 1963/2019 &
MISCELLANEOUS APPLICATION DIARY NO.23667/2019

In view of the Order passed in Review Petition (Cr1.) D.No.40711 of 2019, no further order is required in these Miscellaneous applications and the same are accordingly disposed of.

....., J.
(A.M. KHANWILKAR)

....., J.
(DINESH MAHESHWARI)

NEW DELHI
JANUARY 13, 2020

ITEM NO.32

COURT NO.7

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

MISCELLANEOUS APPLICATION NO. 1963/2019
IN
MISCELLANEOUS APPLICATION DIARY NO.23667/2019
IN
SPECIAL LEAVE PETITION (CRL.) NO.3888 OF 2019

ASOKAN & ORS.

Petitioner(s)

VERSUS

THE STATE OF KERALA

Respondent(s)

(FOR ADMISSION and IA No.125811/2019-APPEAL AGAINST REGISTRARS
ORDER XV RULE 5)

WITH

Diary No(s). 40711/2019 (II-B)

Date : 13-01-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Petitioner(s) Mr. Pallav Shisodia, Sr. Adv.
Mr. Jishnu M.L., Adv.
Mr. Prakash Ranjan Nayak, AOR

For Respondent(s) Mr. Nishe Rajen Shonker, AOR
Ms. Anu K. Joy, Adv.
Mr. Alim Anvar, Adv.
Mr. Shaji J. Kodankandath, Adv.

UPON hearing the counsel the Court made the following
O R D E R

REVIEW PETITION (CRL.) DIARY NO.40711/2019

This review petition is allowed in terms
of the signed order.

MISCELLANEOUS APPLICATION NO. 1963/2019 &
MISCELLANEOUS APPLICATION DIARY NO.23667/2019

In view of the Order passed in Review
Petition (Crl.) D.No.40711 of 2019, no further

order is required in these Miscellaneous applications and the same are accordingly disposed of.

(NEETU KHAJURIA)
COURT MASTER

(VIDYA NEGI)
COURT MASTER

(Signed order is placed on the file.)