

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 16TH DAY OF AUGUST 2023 / 25TH SRAVANA, 1945

CRL.REV.PET NO. 805 OF 2016

CC 289/2010 OF JUDICIAL MAGISTRATE OF FIRST CLASS, CHALAKUDY

CRA 56/2014 OF ADDITIONAL SESSIONS COURT- IV, THRISSUR

REVISION PETITIONER/ ACCUSED :

RAJESH,
S/O.EDASSERY VELU, NEELASWARAM DESOM,
KALADY VILLAGE.

BY ADV SRI.T.N.MANOJ

RESPONDENT/ RESPONDENT :

STATE OF KERALA,
THROUGH THE CIRCLE INSPECTOR OF POLICE,
MALA POLICE STATION,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM - 682 031.

BY SRI.NOUSHAD K.A., PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 24.07.2023, THE COURT ON 16.08.2023 PASSED THE
FOLLOWING:

"CR"

BECHU KURIAN THOMAS, J.

Cri.R.P.No.805 of 2016

Dated this the 16th day of August, 2023

ORDER

Two idols claimed to be owned and possessed by the revision petitioner landed him in a criminal case which he has been fighting for the last thirteen years. He was convicted terming it as possession not accounted for. Challenging his conviction for the offence under Section 53A of the Kerala Police Act, 1960 ('the Act' for short), this revision petition has been preferred.

2. Prosecution alleged that on 18.11.2009, at around 4.30 p.m., while the revision petitioner was travelling in his car through a public road, the Sub Inspector of Mala Police Station, while on his routine vehicle inspection duty, found two idols of quinary metal kept beneath the back seat of his car. Asserting that he was unable to give a satisfactory explanation for the two idols, petitioner was alleged to have committed the offence under Section 53A of the Act of keeping in possession stolen property or property that could not be accounted for.

3. During the trial of the case, the prosecution examined PW1 to PW4 and marked Ext.P1 to Ext.P3 apart from the two idols which were marked as MO1 and MO2. On the basis of the evidence of PW2, the trial

court came to the conclusion that the idols seized from the possession of the accused were 'incredible archaeological properties' belonging to the 18th century'. The learned Magistrate also held that the idols were rare and unique pieces, not usually used in houses for worship and that the accused failed to account for his possession. After finding that the idols are antique pieces and that the accused had not taken any steps to prove his ownership or right to them, the court found the accused guilty under Section 53A of the Act and sentenced him to undergo imprisonment till the rising of the court.

4. On appeal in Crl.A.No.56 of 2014, the Additional Sessions Court-IV, Thrissur, confirmed the conviction and sentence by its judgment dated 28.03.2016. The Appellate Court also relied upon the evidence of PW2 and came to the conclusion that the idols fall within the category of "archaeological section and precious". The Appellate Court also held that PW2 was a competent person to examine the idols and that the accused had not taken any steps to prove his right to own or possess the idols by examining the necessary witnesses.

5. Sri. T.N. Manoj, the learned counsel for the petitioner submitted that both the courts had gone on a wrong tangent in finding the accused guilty. It was further argued that the courts had proceeded on the assumption that the burden of proof is on the accused and on that basis convicted him. It was further argued that the provisions of the Antiquities and Art Treasures Act, 1972 (for brevity 'the Antiquities Act'),

does not prohibit a person from possessing an idol which is an antiquity and also submitted that PW2 was not a competent person at all to depose about the nature of the antiquity. It was therefore submitted that the revision petitioner ought to have been acquitted.

6. Sri. Noushad K.A., the learned Public Prosecutor, on the other hand, submitted that as a revisional court, the concurrent findings of fact entered into by the trial court as well as the Appellate Court ought not to be interfered with. It was further submitted that the burden of proving that a property is validly possessed or owned by the accused under Section 53A of the Act is on the person who claims such ownership and when such a question arises, in the absence of any evidence adduced by that person, it can only be assumed that the idols were stolen. It was also submitted that in any event, the sentence imposed upon the revision petitioner was only imprisonment till the rising of the court and therefore, no prejudice is caused to the accused.

7. I have considered the rival contentions.

8. In order to appreciate the contentions advanced by the learned counsel, it is necessary to refer to the definition in Section 2(a) of the Antiquities Act, which reads as follows : (a) "*antiquity*" includes—

- (I) (i) *any coin, sculpture, painting, epigraph or other work of art or craftsmanship;*
- (ii) *any article, object or thing detached from a building or cave;*
- (iii) *any article, object or thing illustrative of science, art, crafts, literature, religion, customs, morals or politics in bygone ages;*

(iv) any article, object or thing of historical interest;

(v) any article, object or thing declared by the Central Government, by notification in the Official Gazette, to be an antiquity for the purposes of this Act, which has been in existence for not less than one hundred years; and

(II) any manuscript, record or other document which is of scientific, historical, literary or aesthetic value and which has been in existence for not less than seventy-five years;

9. Section 3 of the Antiquities Act prohibits export of antiquities by any person other than the Central Government or its authorized agency, while Section 5 restricts the sale of an antiquity, otherwise than through a license. Regarding the registration of antiquities, Section 14 states that the Central Government must specify those antiquities which are to be registered, while Section 17 provides that whenever an antiquity notified under Section 14 is sold, it shall be intimated to the registering officer. Section 19 gives power to the Central Government to acquire any antiquity on payment of compensation under Section 20.

10. While dealing with the powers under the Antiquities Act, it is also essential to refer to Sections 23 and 24 of the said Act. As per Section 23, an officer authorised by the Central Government alone can search and seize an antiquity, while the power to determine whether an article is an antiquity or not is vested under Section 24 only upon the Director General of the Archaeological Survey of India (ASI) or by an officer not below the Director of ASI.

11. On a reading of the above provisions, it is evident that the

Antiquities Act does not restrict the right of a person to own or possess an art, artifact or an antiquity. If an antiquity is owned or possessed by a person, law restricts that antiquity from being taken out of the country. If there is any antiquity in the possession of a person which has an age of more than 75 years, it is required to be registered with the Director of Archaeological Survey. However, if in case such registration is not done, no consequence is envisaged under the Antiquities Act. Further, if in case the Central Government wants to possess and own an antiquity, they will have to acquire it by paying compensation. In view of the above analysis of the statutory provisions of the Antiquities Act, it is evident that a person is entitled to possess any idol, irrespective of its age.

12. Be that as it may, the prosecution alleged that petitioner could not properly explain the possession of the two quinary idols, and hence an offence under Section 53A of the Act has been committed. Section 53A of the Act reads as below :-

53A. Penalty for possession of property believed to have been stolen.-

Whoever is found in possession or is proved to have been in possession of anything which there is reason to believe to be stolen property or property fraudulently obtained and for the possession of which he fails satisfactorily to account shall on conviction, be liable to fine not exceeding one hundred rupees or to imprisonment for a term which may extend to three months or to both.

13. The police are entitled to question the possession of a property

in the hands of a person. Nevertheless, if the property is movable, property, the title to the said property may not be able to be proved by virtue of any title deed. However, that by itself is not a reason to believe that the property is stolen. The words '*reason to believe*' are terms of significant import. The reason to believe must be based on an objective consideration and cannot be whimsical, arbitrary or capricious. The reason to believe must be guided by good faith and, therefore, must be arrived at with due care and attention. Section 26 of the Indian Penal Code, 1860 defines '*reason to believe*' as "*A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing but not otherwise.*". The said definition will have to be imported into the Antiquities Act since such a term has not been defined in that Act.

14. In the decision in **Dr.Partap Singh and Another v. Director of Enforcement, Foreign Exchange Regulation Act and Others** [(1985) 3 SCC 72], it was observed that the term '*reason to believe*' is not a concept of subjective satisfaction and cannot be a pretence and also that the court can examine whether the reasons for belief have a rational connection. Similarly in the decision in **Joti Parshad v. State of Haryana** [(1993) Supp (2) SCC 497] also, it was held that the circumstances must be such that a reasonable man by probable reasoning be able to arrive at such a conclusion.

15. Petitioner was found in possession of a quinary idol. He did not possess any document to prove his ownership of the idol. However, till

date, no one has complained of loss of any idol of the nature found in the possession of the petitioner. A mere assumption or doubt on the part of the police cannot take the place of proof, especially in the absence of any other person claiming ownership or possession of the idols. As the principle in civil law, possession is nine-tenths ownership, when the petitioner was found in possession of the idols and no law prevents such an idol from being possessed by a private person, it cannot be assumed that the idols were stolen property. An arbitrary or unsubstantiated suspicion by itself cannot be a reason to convict an accused under section 53A of the Act.

16. Adverting to the evidence in the case, the prosecution examined PW2, who is the Documentation Officer of the Archaeological Department at Thrissur and issued Ext.P2 report. In the chief examination, PW2 mentioned that the idols are quinary (panchaloha) idols from the 18th century as revealed during his examination and that they are rare and precious. However, in the cross examination, it was revealed that, other than a visual assessment, PW2 had not conducted any scientific examination of the two idols to arrive at the conclusion about their nature or age. He also deposed that he had not conducted any detailed study nor even submitted a final report of this verification. He also deposed that he could not deny that these types of idols are used at homes for regular worship. In the re-examination PW2 stated that he came to the conclusion that the idols are quinary, from his experience

and on visual observation. Such an assumption or guesswork made by PW2 is only an opinion without a proper study or assessment. No reliance can be made on the evidence of PW2. Reliance by the both courts upon the deposition of PW2 that the idols are of the 18th century is, therefore, perverse and highly irregular. In the absence of any final report submitted by PW2 regarding the age of the idols, the trial court, as well as the Appellate Court, egregiously erred in relying upon his deposition regarding the age and nature of idols.

17. In the 313 statement of the accused, he had specifically mentioned that the idols were in the possession of his father and that he had taken it for cleaning when the police seized those. There is no reason not to reckon the said statement, especially in the absence of any evidence adduced by the prosecution to prove reasonableness of its suspicion that the idols are stolen.

18. Apart from the above, the person authorised under law to decide whether any article or object is an antiquity or not is the Director General of the ASI or an officer not below the Director of ASI as per section 24 of the Antiquities Act. PW2 is not a competent person under law to determine the question whether the idols seized by the police were antiquities or not. Further, even the seizure of the idols and terming it as an antiquity was legally improper, as only a person authorized by the Central Government under section 23 could have seized the idols if they were antiquities.

19. Having regard to the above circumstances, the conviction of the revision petitioner for the offence under Section 53A of the Act is highly irregular and is liable to be set aside.

20. Hence, the conviction and sentence imposed on the accused in C.C.No.239 of 2010 on the files of the Judicial First Class Magistrate's Court, Chalakkudy, as confirmed in CrI.A.No.56 of 2014 on the files of the Additional Sessions Court-IV, Thrissur are set aside, and the accused is acquitted.

Since the two quinary idols seized from the petitioner was already directed to be released to him by this Court by order dated 25.08.2016, on conditions, the said order is made absolute, and the conditions imposed by the court in the said order shall not hereafter survive.

The criminal revision petition is allowed as above.

Sd/-

BECHU KURIAN THOMAS, JUDGE

RKM