

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 26TH DAY OF DECEMBER 2014/5TH POUSHA, 1936

Crl.Rev.Pet.No. 2246 of 2014

**AGAINST THE JUDGMENT IN CRA 326/2013 of ADDL.SESIONS COURT-I,KOTTAYAM
DATED 01-10-2014**

**AGAINST THE JUDGMENT IN ST 65/2012 of JUDICIAL FIRST CLASS MAGISTRATE
COURT- II, ETTUMANOOR DATED 21-08-2013**

REVISION PETITIONER/APPELLANT/ACCUSED:

**THOMASKUTTY STEPHEN, S/O. STEPHEN,
MADATHIL HOUSE, CHERPUNKAL P.O.,
KOTTAYAM DISTRICT.**

BY ADV. SRI.M.S.BREEZ

RESPONDENT(S):

- 1. PHILIP THOMAS, S/O. THOMAS,
MADATHIL HOUSE, CHERPUNKAL P.O.,
KOTTAYAM DISTRICT 686 001**
- 2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM 682 031.**

R2 BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
26-12-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

JJJ

K.RAMAKRISHNAN, J.

Crl.R.P. No. 2246 of 2014

Dated this the 26th day of December, 2014

ORDER

The accused in S.T. 65/2012 on the files of Judicial First Class Magistrate Court-II, Ettumanoor, is the revision petitioner herein. The case was taken on file on the basis of a private complaint filed by the complainant against the revision petitioner alleging offence under section 138 of the Negotiable Instruments Act.

2. The case of the complainant in the complaint was that the revision petitioner borrowed a sum of Rs.5 lakhs on 1.11.2011 and executed a promissory note and in discharge of that liability he had issued Ext.P1 cheque, which on presented was dishonoured for the reason 'funds insufficient' evidenced by Ext.P2 dishonour memo. This was intimated to the complainant by his banker vide Ext. P3 intimation letter. Complainant issued Ext.P4 notice vide Ext.P5 postal receipt

and the same was received by the revision petitioner evidenced by Ext.P6 postal acknowledgment. He had not paid the amount so he had committed the offence punishable under section 138 of the Negotiable Instruments Act. Hence the complaint.

3. When the revision petitioner appeared before the Court below, the particulars of the offence were read over and explained to him and he pleaded not guilty. In order to prove the case of the complainant, the complainant himself was examined as PW1 and one witness was examined as PW2 and Exhibits P1 to P7 were marked on his side. After the course of the complainant's evidence, revision petitioner was questioned under section 313 of Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the complainant's evidence. He had further stated that he had borrowed a sum of Rs.10 lakhs from one John Parettu, and issued a blank signed cheque as

security. Though he had paid the amount with interest, the cheque and promissory note were not returned and misusing the same, the present complaint has been filed. He had further stated that PW2 is having enemical terms with him and that is the reason why he had deposed against him. He had produced Exts. D1 and D1(a) to prove his case.

4. After considering the evidence on record, the trial court found the revision petitioner guilty under section 138 of the Negotiable Instruments Act and convicted him thereunder and sentenced him to undergo simple imprisonment for six months and also to pay the cheque amount of Rs.5 lakhs as compensation to the complainant and in default to undergo simple imprisonment for three months under section 357(3) of Code of Criminal Procedure. The revision petitioner filed Criminal Appeal No.326/2013 before the Sessions Court, Kottayam which was made over

to 1st Additional Sessions Court, Kottayam, for disposal. The learned Additional Sessions Judge allowed the appeal in part, confirming the order of conviction but modified the sentence directing the revision petitioner to pay a fine of Rs.6,20,000/- and in default to undergo simple imprisonment for three months. It is further ordered that if the fine amount is realised, the same shall be paid to the complainant as compensation under section 357(1) of Code of Criminal Procedure. Dissatisfied with the same, the present revision has been filed by the revision petitioner/accused before the Court below.

5. Considering the scope of enquiry and also the nature of contentions raised, this Court felt that the revision can be disposed of at the admission stage itself, after hearing the counsel for the revision petitioner and the Public Prosecutor appearing for the 2nd respondent and dispensing with notice to the 1st respondent.

6. The counsel for the revision petitioner submitted that the Courts below have not properly appreciated Exts.D1 and D1(a) and the nature of defence taken by the revision petitioner and if it is correctly appreciated, it will be seen that he had rebutted the presumption and the case of the revision petitioner is more probable than the case of the complainant and he is entitled to get acquittal.

7. On the other hand, the learned Public Prosecutor supported the concurrent findings of the Court below on this aspect.

8. The case of the complainant in the complaint was that revision petitioner borrowed a sum of Rs.5 lakhs and in discharge of that liability he had executed Ext.P7 promissory note and when demanded he issued Ext.P1 cheque in discharge of that liability. The case of the revision petitioner was that he borrowed a sum of Rs.10 lakhs from one John

Parettu and issued a signed blank cheque and also executed a promissory note. Though he had paid the amount with interest, the cheque and the promissory note were not returned to him.

9. In order to prove the case of the complainant, the complainant himself was examined as PW1 and one witness was examined as PW2 and both of them have categorically stated that the revision petitioner borrowed the amount and executed Ext.P7 promissory note and later issued Ext.P1 cheque in discharge of that liability. Though they were crossexamined at length, nothing was brought out to discredit their evidence on this aspect. Further, except producing Exts.D1 and D1(a) the revision petitioner had not adduced any evidence to prove his case. Further, the production of Exts. D1 and D1(a) will not help the revision petitioner to prove his case as that has nothing to do with the transaction alleged by the complainant. He had not

taken any steps to get back the cheque which was given as security for Ext.D1 transaction after it was fulfilled. So the case of the revision petitioner that the cheque given to one John Parettu was missing, cannot be believed. He did not send any reply to the notice issued as well. So under the circumstances, Courts below were perfectly justified in coming to the conclusion that the revision petitioner had committed the offence punishable under section 138 of the Act and rightly convicted him for the said offence and the concurrent findings of the court below on this aspect do not call for any interference.

10. As regards the sentence is concerned, Court below had sentenced him to undergo simple imprisonment for six months and also to pay the cheque amount of Rs.5 lakhs as compensation and in default to undergo simple imprisonment for three months more under section 357(3) of Code of Criminal Procedure. But, the appellate court had

modified the sentence to fine of Rs.6,20,000/- with default sentence of three months alone and further directed to pay the fine if realised to the complainant as compensation under section 357(1) of Code of Criminal Procedure.

11. In the decision reported in **Somnath Sarkar v. Utpal Basu Mallick – 2013(4) KLT 350 (SC)**, the Supreme Court has observed that Court has got power to award double the cheque amount as fine and if fine amount is quantified, compensation can be awarded out of the same. So, the fine of Rs.6,20,000/- fixed by the appellate Court and direction to pay the amount as compensation to the complainant under section 357(1) of Code of Criminal Procedure cannot be said to be excessive. So, the petitioner is not entitled to get any further leniency in the sentence also as the appellate Court had sentenced him to pay fine alone.

12. When this Court was about to dispose of the case the counsel for the revision petitioner sought eight months' time to pay the amount. Considering the amount involved, this Court feels that the time sought for appears to be reasonable. So the revision petitioner is granted time till 26.08.2015 to pay the amount. Till then, execution of the sentence is directed to be kept in abeyance.

With the above direction and observation, the Revision Petition is dismissed. Office is directed to communicate this Order to the concerned Court immediately.

Sd/-
K.RAMAKRISHNAN,
JUDGE

//True Copy//

P.A. To Judge

jjj