

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

Crl.Rev.Pet.No. 2361 of 2003 ()

AGAINST THE JUDGMENT IN CRL.A 59/2002 of SESSIONS COURT, THRISSUR
DATED 25-06-2003

AGAINST THE JUDGMENT IN ST 2439/1997 of J.M.F.C., IRINJALAKUDA
DATED 21-10-1999

REVISION PETITIONER/APPELLANT/ACCUSED:

V.K. RAVEENDRANATH, AGED 51,
S/O. KUNDUCHAMI,
VAZHAPPILLY HOUSE,
KANJIRATHODU,
IRINJALAKUDA

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE OF KERALA:

1. SUBHASH, S/O. RAJAGOPALAN,
KOTHALI HOUSE, KALLETUMKARA,
IRINJALAKUDA, THRISSUR DISTRICT.
2. STATE OF KERALA REP BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
AT ERNAKULAM.

R1 BY ADV. SRI.N.B.ANOOP

R2 BY P.P. SMT. V.H. JASMINE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
20-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl.R.P.No.2361 of 2003
.....

Dated this the 20th day of February, 2015.

O R D E R

The accused in S.T.No.2439/1997 on the file of the Judicial First Class Magistrate Court, Irinjalakuda is the revision petitioner herein.

2. The case was taken on file on the basis of a private complaint filed by the first respondent against the revision petitioner alleging an offence under section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act' for short). Earlier, after trial, the trial court by judgment dated 21.10.1999 found the revision petitioner guilty under section 138 of the Act and sentenced him to pay fine of Rs.77,500/-, in default to undergo simple imprisonment for six months and it is further ordered that, if the fine amount is realised, Rs.75,000/- be paid to the complainant as compensation under section 357(1)(b) of the Code of Criminal Procedure.

3. Aggrieved by the same, the revision petitioner filed Crl.A.No. 459/1999 before the Sessions Court, Thrissur and the learned Sessions Judge confirmed the order of conviction

but remanded the case for passing appropriate sentence taking note of the provisions contained in section 80 of the Act. After remand, the learned magistrate sentenced him to undergo simple imprisonment for two months and also to pay a compensation of Rs.2,50,000/-, against which, the revision petitioner filed Crl.A.No.59/2002 before the Sessions Court, Thrissur and the learned Sessions Judge allowed the appeal in part reducing the substantive sentence to one month simple imprisonment and compensation to Rs.2,30,000/- with default sentence of three months simple imprisonment. This is being challenged by the revision petitioner/accused before the court below.

4. Heard the counsel for the revision petitioner, the first respondent and the Public Prosecutor.

5. The counsel for the revision petitioner submitted that the court below convicted the revision petitioner for the offence under section 138 of the Act and this was confirmed by the appellate court earlier. But the sentence imposed by the trial court was only of fine of Rs.77,500/-, out of which Rs.75,000/- was ordered to be given as compensation to the complainant. But the appellate court had remanded the case for passing

proper sentence and after remand, the trial court had sentenced him to undergo simple imprisonment for two months and also to pay a compensation of Rs.2,50,000/- to the complainant without any default sentence. Thereafter the appellate court had reduced the substantive sentence to one month simple imprisonment and compensation to Rs.2,30,000/- with default sentence of three months simple imprisonment and that amount, according to the counsel for the revision petitioner, is excessive. The findings were supported by the counsel for the first respondent and the learned Public Prosecutor.

6. The limited question that arises for consideration in the revision is only regarding the quantum of punishment as the conviction of the revision petitioner by the trial court was confirmed by the appellate court earlier in Crl.A.No.450/1999 and that order was not challenged and that has become final. The trial court had after remand, sentenced him to undergo simple imprisonment for two months and also to pay a compensation of Rs.2,50,000/- to the complainant without providing any default sentence. But the appellate court reduced the substantive sentence to one month simple imprisonment and reduced compensation to Rs.2,30,000/-

with default sentence of three months simple imprisonment under section 357(3) of the Code. During the time when the judgment was pronounced by the court below, there is no provision for payment of fine more than Rs.5,000/-. But the Hon'ble Supreme Court in the decision reported in **Suganthi v. Jagadeeshan** (2002 (1) KLT 581), considering the fact held that though the court has no power to impose fine more than Rs.5,000/-, that will not affect the right of the court to award compensation and it is also observed that default sentence also can be imposed for non payment of compensation. This was reiterated by the Hon'ble Supreme Court in the later decisions as well. So the court below was perfectly justified in awarding compensation more than the cheque amount. The appellate court had calculated the interest at the rate of 10% though under section 80 of the Act, 18% interest has been provided for realization of the amount, if the cheque was dishonoured. Further, even assuming that 9% interest was calculated from the date of cheque till today, the amount awarded cannot be said to be excessive as no attempt was made on the part of the revision petitioner to pay any amount to the complainant so far. The complainant had to wait to get the

amount from 1997 onwards. So, under the circumstances, the compensation awarded by the court below cannot be said to be excessive as the appellate court had even reduced compensation fixed by the trial court to Rs.2,30,000/- from Rs.2,50,000/-. Since compensation has been awarded for more than the cheque amount, this Court feels that the substantive sentence of one month simple imprisonment appears to be harsh in view of the dictum laid down in the decision reported in **Damodar S. Prabhu v. Sayed Babalal H.** (JT 2010 (4) SC 457) and **Kaushalya Devi Massand v. Roopkishore** (AIR 2011 SC 2566) So this Court feels that reducing the substantive sentence of imprisonment till the rising of court alone will be sufficient confirming the order of compensation at the modified rate by the appellate court with the default sentence imposed and that will meet the ends of justice. So, the sentence imposed by the court below and modified by the appellate court is further modified as follows:

The revision petitioner is sentenced to undergo imprisonment till the rising of court and also to pay compensation of Rs.2,30,000/-, in default to undergo simple imprisonment for three months. Considering the amount

involved, three months time is granted to the revision petitioner to pay the compensation. So the revision petitioner is granted time till 20.5.2015 to pay the amount. Till then execution of the sentence is directed to be kept in abeyance.

With the above modification in the sentence, the revision is allowed in part and disposed of accordingly.

Office is directed to communicate a copy of this order to the concerned court immediately.

Sd/-

K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

