

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

Crl.Rev.Pet.No. 158 of 2005 ()

**AGAINST THE JUDGMENT IN CRA 746/2003 OF IIIrd ADDITIONAL SESSIONS COURT
(ADHOC), FAST TRACK - I, THRISSUR, DATED 30-10-2004**

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**AGAINST THE JUDGMENT IN S.T. No.3397/2000 of J.M.F.C.-II,
THRISSUR, DATED 30-10-2003**

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**K.A. GOPI, S/O. KONDOOTH APPUKUTTAN,
METHALA VILLAGE, KODUNGALLUR TALUK, THRISSUR DISTRICT.**

BY ADV. SRI.K.P.DANDAPANI (SR.)

RESPONDENT(S)/COMPLAINANT & STATE:

- 1. M/S. SAKTHAN KURIES & LOANS (P) LTD.,
PALLIKULAM ROAD, THRISSUR, REPRESENTED BY
POWER OF ATTORNEY HOLDER AND DEPUTY
CHAIRMAN P.L. GEORGE.**
 - 2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**
- R1 BY ADV. SRI.G.SREEKUMAR (CHELUR)**
R2 BY PUBLIC PROSECUTOR SMT. BINDU GOPINATH.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
21-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

K. RAMAKRISHNAN, J.

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Crl. R. P. No.158 of 2005
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Dated this the 21st day of January, 2015

ORDER

Accused in S.T.No.3397/2000 on the file of the Judicial First Class Magistrate Court-II, Thrissur, is the revision petitioner herein. The case was taken on file on the basis of a private complaint filed by the first respondent/complainant herein against the revision petitioner, alleging offence under Section 138 of the Negotiable Instruments Act (hereinafter called 'the Act').

2. The case of the complainant in the complaint was that, the complainant was conducting a chitty company registered under the 'Companies Act' and they filed O.S.No.233/1997 before the Sub Court, Thrissur, for realisation of the amount due from the subscriber of the chitty and the guarantors and obtained a decree and the present revision petitioner was one of the guarantors for the

kuri amount and one of the defenders in the above suit. After the decree was passed, the petitioner had issued Ext.P2 cheque for the decree amount in favour of the complainant, which when presented was dishonored for the reasons 'funds insufficient', evidenced by Ext.P3 dishonor memo. This was intimated to the complainant by Ext.P4 memo. Complainant issued Ext.P5 notice to the revision petitioner intimating the dishonour and demanding payment, which was received by him evidenced by Ext.P6 postal acknowledgment and he sent Ext.P7 reply making false allegations. 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 offence were read over and explained to him and he pleaded not guilty. In order to prove the case of the complainant, the authorised agent of

the complainant company was examined as PW1 and Exts.P1 to P7 were marked on their side. After closure of the complainant's evidence, the revision petitioner was questioned under Section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the complainant's evidence. He had further stated that, the cheque was not issued by him. The blank signed cheque given as security at the time of bidding the amount by the subscriber was mis-used and the present complaint was filed. No defence evidence was adduced on his side to prove his case. After considering the evidence on record, the court below 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 two months. Though he filed Crl.Appeal No.746/2003 before the Sessions Court, Thrissur, which was made over to IIIrd

Additional Sessions Court (Ad-hoc), Thrissur, for disposal and the learned Additional Sessions Judge dismissed the appeal, confirming the order of conviction and sentence passed by the court below. Aggrieved by the same, the present revision has been filed by the revision petitioner/accused before the court below.

4. Heard both sides.

5. The counsel for the revision petitioner submitted that, the cheque given as security at the time of bidding the kuri by the subscriber was mis-used and the present complaint was filed. The fact that, the complainant had filed execution petition for realisation of the amount and the property of the 4th accused was attached and it was sold in auction and purchased by the complainant himself were admitted and it was discussed in the judgment of the court below. Thereafter the amount was paid by other accused persons and the case was settled between the

parties. This aspect has not been properly considered by the court below. So he prayed for acquittal.

6. On the other hand, the counsel for the first respondent submitted that, the matter has been settled between the parties and the entire amount due to them has been recovered from other accused persons, but he supported the conviction entered by the court below.

7. The case of the complainant in the complaint was that, the present revision petitioner was one of the sureties for the kuri transaction with the complainant and the complainant filed O.S.No.233/1997 before the Additional Sub Court, Thrissur, against the subscriber and the guarantors on the basis of the transaction for recovery of amount including the present revision petitioner and obtained Ext.P1 decree and after the decree in discharge of that liability, undertaking the liabilities of others also, the revision petitioner had issued Ext.P2 cheque for the amount

due as per the decree. The case of the revision petitioner was that, the blank signed cheque given earlier was mis-used and the present complaint was filed. PW1 was examined and he deposed in support of the case of the complainant in the complaint. Though he was cross examined at length, nothing was brought out to discredit his evidence on this aspect. No evidence was adduced on the side of the revision petitioner to prove that, the blank signed cheque given earlier as security was mis-used and the present complaint was filed. Once he had undertaken the liability of others, covered by Ext.P1, decree of the civil suit and issued the cheque, then, if it is dishonoured and he did not pay the amount in spite of giving notice, offence under Section 138 of the Negotiable Instruments Act will be attracted as against him. He had no case that, he had paid the amount, on receipt of the notice. Merely because some other persons have remitted the amount after the offence

was committed is not a ground to exonerate him from the criminal liability under Section 138 of the Act. So under the circumstances, courts below were perfectly justified in convicting the revision petitioner for the offence under Section 138 of the Act and the concurrent findings of the court below on this aspect do not call for any interference.

8. As regards the sentence is concerned, the trial court sentenced him to undergo simple imprisonment for two months and the same was confirmed by the appellate court. Considering the fact that, the matter has been settled and the entire amount due in the transaction covered by the cheque has been subsequently paid by other judgment debtors and the complainant was satisfied with the same, this court feels that, that can be taken as a mitigating circumstance to show leniency in the sentence. In such circumstances, it is not necessary that imprisonment must be compulsory and imposing fine will be

sufficient. So considering the circumstances, sentence imposed by the court below is set aside and the same is modified as follows:

The revision petitioner is sentenced to pay a fine of ₹3,000/-, in default to undergo simple imprisonment for one month. Two months time is granted to the revision petitioner to pay the amount, till then, the execution of sentence is directed to be kept in abeyance.

With the above modification of the sentence alone, the revision petition is allowed in part and disposed of accordingly. Office is directed to communicate this order to the concerned court, immediately.

Sd/-

K. RAMAKRISHNAN, (Judge)

// True Copy//

P.A. to Judge

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