

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

Crl.Rev.Pet.No. 287 of 2007 (A)

**CRL.A.NO. 399/2004 OF ADDITIONAL DISTRICT COURT (FAST TRACK
COURT NO.III), PALAKKAD**

S.T.NO.1548/2003 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, PALAKKAD

REVISION PETITIONER(S)/APPELLANT/ACCUSED :

**SAIDALI, S/O.VEERAN SAHIB,
FAIZAL HOUSE, PIRAYIRI, PALAKKAD.**

**BY ADVS.SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P**

**RESPONDENT(S)/1ST RESPONDENT/2ND RESPONDENT/COMPLAINANT/
NON-PARTY :**

**1. ABDUL RASHEED, MANAGING PARTNER,
LAILA TOBACCO COMPANY, KOPPAM, PALAKKAD.**

**2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

**R1 BY ADVS. SRI.RAJESH SIVARAMANKUTTY
SRI.N.A.ABHILASH**

R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 07-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Msd.

C.T.RAVIKUMAR, J

Crl.R.P.No.287 of 2007

Dated this the 7th day of April, 2015

ORDER

When this matter is taken up for consideration the learned counsel representing the counsel for the revision petitioner submitted that the revision petitioner is no more. The revisionist was the accused in S.T.No.1548/2003 on the files of the court of the Judicial First Class Magistrate-I, Palakkad. As per the impugned judgment the revision petitioner was convicted for the offence under section 138 of the Negotiable Instruments Act and was sentenced to undergo imprisonment till the rising of the court . He was also directed to pay compensation of ₹80,980/-to the complainant under section 357(3) of the Code of Criminal Procedure with the default sentence. Aggrieved by the same the petitioner preferred Crl.A.No.399/2004. The appellate court found the contentions raised by the petitioner as meritless and consequently dismissed the appeal confirming the conviction as also the sentence. This revision petition is filed in the said circumstance challenging the judgment in Crl.A.No.399/2004 passed by the Court of the Additional Sessions Judge (Fast Track Court No.III) Palakkad confirming the conviction as also the sentence

imposed by the Court of the Judicial First Class Magistrate-I, Palakkad in S.T.No.1548/2003. It was filed as early as on 13.2.2007. The learned counsel further submitted that though the legal heirs of the revision petitioner were contacted they revealed their reluctance to pursue with this matter even after realising that there is a direction to pay compensation to the tune of ₹80,980/- as per the impugned judgment. I am of the view that despite the death of the revision petitioner and the reluctance on the part of the legal heirs to pursue with this matter it is only appropriate to consider the revision petition on merits and in accordance with law, considering the fact that as per the impugned judgment the deceased was directed to pay a compensation of ₹80,980/-.

2. The first respondent filed the complaint against the revision petitioner alleging commission of offence under section 138 of the N.I.Act pursuant to the dishonour of the Ext.P1 cheque dated 3.7.2002 issued in discharge of a legally enforceable debt. The cheque on its presentation for encashment got dishonoured due to paucity of fund in the account maintained by the deceased revision petitioner. The failure on his part to pay the amount due despite the expiry of the statutory period after the receipt of the statutory notice

made the first respondent to file the complaint which was later taken on file and numbered as S.T.No.1548/2013. On due process the accused entered appearance and particulars of the offences were read over and explained to him. He pleaded not guilty and claimed to be tried. To bring home the charge against the deceased revision petitioner the first respondent got himself examined as PW1 and got marked Exts.P1 to P4. After closure of the evidence of the complainant the revision petitioner was examined under section 313, Cr.P.C and he denied all the incriminating circumstances put to him. Though he did not mount the box he adduced documentary evidence and got marked Exts.D1 and D2. It is after appreciating the evidence on record that the trial court arrived at the conclusion that the revision petitioner had committed the offence under section 138 of the N.I.Act and consequently convicted him thereunder. As noticed hereinbefore, for the conviction under section 138 of the N.I. Act he was sentenced as aforesaid. The conviction and sentences were confirmed by the appellate court in Crl.A.No.399/2004. In this revision petition Crl.M.A.No.393/2015 has been filed by the first respondent/the complainant. Though the prayer in the said miscellaneous application could not be granted as such I am of the

view that the statement therein could be taken into account for the purpose of disposal of this revision petition. In fact, in the light of the statements in the said application I do not think it necessary to consider the contentions raised in the revision petition for the purpose of mounting challenge against the impugned judgment, on merits. Paragraph 2 in the said miscellaneous application would reveal that the issues involved in this revision petition were settled between the first respondent and the legal heirs of the revision petitioner subsequent to the death of the revision petitioner. It is also stated therein that an amount of ₹50,000/- was deposited by the revision petitioner during his life time, pursuant to the order dated 13.2.2007 of this Court. Admittedly, that amount is still remaining in deposit before the trial court. Though the matter has been settled between the parties I am of the view that there is no scope for compounding the offence under section 147, Cr.P.C as the revision petitioner/accused is no more. The offence under section 138 could be compoundable only against the revision petitioner/accused. At the same time, I am of the view that while exercising the revisional jurisdiction this Court could pass an order in the interest of justice, taking into account the facts and

circumstances. When it is evident that the matter has actually been settled between the first respondent/the complainant in S.T.No.1548/2003 and when he asserted that the matter has been settled between himself and the legal heirs of the revision petitioner I am of the view that the same has to be taken into account. There is no inviolable position that the amount of compensation should always be equal to the amount covered by the cheque in question. Evidently, the compensation was ordered under section 357(3) Cr.P.C. Under section 357(3) Cr.P.C when a Court imposes sentence, of which fine does not form a part, the Court may, when passing the judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person was so sentenced. In this case owing to the alleged action from the part of the accused it is the first respondent who suffered loss and it was he who filed Crl.M.A.No.393/2015 to the effect that the dispute has been settled. The tenor of the petition would reveal that he is prepared to accept the amount which is now remaining in deposit for settling the dispute. Since the revision petitioner is no more and during his life

time deposited an amount of ₹50,000/- and that amount is still remaining as deposit before the trial court and settlement has been arrived at between the first respondent/complainant and the legal heirs of the revision petitioner while confirming the conviction the order directing him to pay compensation is modified and it is limited to the amount of ₹50,000/- and the first respondent/complainant is permitted to withdraw the amount of ₹50,000/- deposited pursuant to the order of this Court on 13.2.2007, on proper application.

Subject to the above this revision petition is disposed of.

Sd/-

C.T.RAVIKUMAR,JUDGE.

dlk