

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

Crl.Rev.Pet.No. 1431 of 2006 ()

**AGAINST THE JUDGMENT IN CRL.A.NO.171/2004 of ADDL.SESIONS COURT (AD HOC)-II,
MANJERI, DATED 25-01-2006**

**AGAINST THE JUDGMENT IN C.C.NO.323/2000 of JUDICIAL FIRST CLASS MAGISTRATE
COURT, TIRUR, DATED 26-02-2004**

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**K.M.HASEENA, W/O.SHAHUL,
KIZHAKKAMKUNNATH HOUSE, NEAR KHAIMA HOSPITAL,
P.O.TIRUR.**

BY ADV. SRI.K.P.MUJEEB

RESPONDENT(S)/COMPLAINANT & STATE:

- 1. C.MOIDEEN, S/O.KUNJIMOIDEEN,
CHATHANCHERRY HOUSE, VARIRANKODE P.O., TIRUR.
REP. BY THE POWER OF ATTORNEY HOLDER, KOYA ALUKKAL,
S/O.ABOOBAKER, ALUKKAL HOUSE,
PULLOOR AMSOM, THEKKAMKUTTOOR DESOM,
MALAPPURAM DISTRICT.**
- 2. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

**R1 BY ADV. SMT.K.NANDINI
R2 BY PUBLIC PROSECUTOR SMT.MADHU BEN**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15-10-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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RAJA VIJAYARAGHAVAN V, J.

Crl.R.P.No.1431 of 2006

Dated this the 15th day of October, 2015

O R D E R

The revision petitioner herein is the sole accused in C.C.No.323/2000 on the file of the Judicial First Class Magistrate Court, Tirur. In the said proceeding the petitioner was proceeded against at the instance of the 1st respondent herein for having committed an offense under S 138 of the Negotiable Instruments Act.

2. Brief allegation which resulted in the prosecution is that the cheque drawn by the petitioner for a sum of Rs. 50,000/- in favor of the 1st respondent in discharge of a legally enforceable debt stood dishonoured on presentation and despite initiating measures as per statute no repayment was effected. After complying with all the statutory formalities complaint was filed before the jurisdictional

Magistrate.

3. As per judgment dated 26.02.2004, of the learned Magistrate, after evaluating all the materials, held that the complaint had succeeded in bringing home the guilt and accordingly, the petitioner was convicted and sentenced to undergo simple imprisonment for 3 months and to pay compensation of Rs.50,000/- to the complainant under S.357(3) of the Code of Criminal Procedure and in default to undergo simple imprisonment for 2 months.

4. Against the above judgment, conviction and sentence, the petitioner had preferred an appeal before the Court of Session, Manjeri and as per judgment dated 25.01.2006, the learned Sessions Judge had confirmed the conviction and sentence.

5. It is challenging the legality and propriety of the

concurrent findings arrived at by the courts below that the instant criminal revision petition is preferred by the revision petitioner.

6. I have heard the learned counsel appearing for the revision petitioner as well as the learned counsel appearing for the respondents.

7. The learned counsel appearing for the revision petitioner has submitted that the finding of fact arrived at by the courts below cannot be sustained and the same is liable to be set aside. It is also submitted that the revision petitioner had succeeded in rebutting the statutory presumption under S.139 of the Negotiable Instruments Act. Finally it was submitted that the substantive sentence of imprisonment be set aside and a breathing time be granted to settle the dispute.

8. Per contra, the learned counsel appearing for the respondents has submitted that both the courts below have evaluated the materials in the proper perspective and have passed a considered finding. It is further submitted that there is absolutely no ground to interfere in revision.

9. After having heard the respective counsels, I am of the considered view that the revision petitioner has not made out any ground for interfering in revision. The courts below have rightly held that the debt due to the 1st respondent was a legally enforceable debt and the cheque was duly executed and issued in discharge of the said debt.

10. The learned counsel appearing for the revision petitioner however submitted that a sum of Rs.25,000/ has already been deposited as directed by this Court while admitting the revision Petition. In the facts of the instant case, as contented by the learned counsel, it appears, that

the imposition of a substantive sentence of imprisonment on the petitioner is unwarranted. I am of the considered view that sentence of imprisonment can be modified to imprisonment till rising of court and the petitioner can be granted a breathing time to wipe off the balance amount due to the 1st respondent.

11. Consequently, this Revision Petition will stand disposed of subject to the following terms:

i. The Revision Petitioner shall appear before the Trial Court on or before 19.11.2015 and undergo imprisonment till rising of the court.

ii. The Revision Petitioner shall pay Rs.50,000/- (Rupees Fifty thousand only) to the 1st respondent/complainant as compensation under Sec.357(3) of the Cr.P.C. on or before the said date. Any amount deposited by the petitioner before the competent courts shall be given credit to and the balance alone needs to be paid as

compensation or fine, as the case may be. The complainant shall be entitled to realise such deposit from the court. In case of direct payment, receipts evidencing the payment shall be produced before the trial court on the date of appearance. In the alternative, the revision petitioner may also deposit the amount due before the trial court.

iii. In default, the Revision Petitioner shall undergo simple imprisonment for a period of one month.

The Criminal Revision Petition is disposed of accordingly.

Sd/-
**RAJA VIJAYARAGHAVAN V,
JUDGE.**

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[True copy]

P.A to Judge