

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

CrI.Rev.Pet.No. 428 of 2012

CRA 233/2011 of ADDITIONAL DISTRICT AND SESSIONS COURT, PALA
ST 648/2006 of J.M.F.C-II.,PALA

REVISION PETITIONER/APPELLANT/ACCUSED:

MATHEW.J.VADAKKEN
VADAKKEN HOUSE, ANTHINADU P.O., PRAVATHANAM
NEAR BLOCK OFFICE, PALA.

BY ADV. SRI.N.K.MOHANLAL

RESPONDENT(S)/ADDITIONAL RESPONDENT/COMPLAINANT NO.1:

1. K.A.CHANDI
KIZHAKKEVELIKKATHU HOUSE, EDAPPADI P.O., (DIED)
IMPLEADED AS PER ORDER IN CRMP.7909/2008 DATED 20/5/2009.
PIN- 686 578

2. SALIAMMA THOMAS, W/O.CHANDI,
KIZHAKKEVELIKKATHU HOUSE, EDAPPADI KARA
BHARANANGANAM VILLAGE.

3. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.BABY THOMAS
BY ADV. SRI.GIGIMON ISSAC
BY PUBLIC PROSECUTOR SMT. BINDU GOPINATH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 20-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CrI.Rev.Pet.No. 428 of 2012

APPENDIX

ANNEXURE

A1- TRUE COPY OF RECEIPT DATED 23.7.2011 FOR DEPOSITING
RS.60,000/-

TRUE COPY

P.S TO JUDGE

RAJA VIJAYARAGHAVAN.V. J

Crl.R.P.428 of 2012

Dated 20th August, 2015

ORDER

1. In this revision petition filed u/s 397 and 401 of the Code of Criminal Procedure, petitioner who is the accused in S.T.648 of 2006 on the file of the Judicial Magistrate of First Class-II, Palakkad, challenges the conviction and sentence passed against him for the offence punishable u/s 138 of the Negotiable Instruments Act, 1981. The cheque amount is Rs.2,73,000/-. As per judgment dated 27.5.2011, the petitioner was sentenced to undergo simple imprisonment for six months and to pay a compensation of Rs.2,73,000/- to the complainant u/s 357(3) of the Cr.P.C and in default of payment of compensation to undergo simple imprisonment for a period of three months. The appeal preferred by

the petitioner as Crl.A.233 of 2011 was dismissed by the Additional Sessions Judge, Pala, confirming the conviction and sentence passed by the learned Magistrate.

2. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for respondent Nos. 1 and 2.

3. The learned counsel raised several contentions to assail the concurrent findings of the Courts below. The Courts below have held that the cheque in question was drawn by the petitioner in favour of the complainant. It was also found that the petitioner/accused had failed to make payment within 15 days on receipt of statutory notice. Both the Courts below have considered and rejected the

defence set up by the respondents while entering his conviction. The said conviction has been recorded after a careful evaluation of the oral and documentary evidence. This Court sitting in the revisional jurisdiction will not be justified in interfering with the concurrent findings recorded by the Courts below. I find no illegality or impropriety in the conviction so recorded concurrently by the Courts below and the same is hereby confirmed.

4. What survives for consideration is the quantum of the sentence imposed on the petitioner. It appears that the original complainant expired during the pendency of the proceedings and the 2nd respondent, his wife was impleaded as additional 2nd respondent. In the facts and circumstances of this case, I do not think that this Court will be justified in

sentencing the petitioner to undergo imprisonment for the offence committed. As directed by this Court by order dated 21.2.2012, the petitioner has deposited a sum of Rs 1,00,000/ before the trial Court . The said amount shall be disbursed to the 2nd respondent by the trial Court with immediate effect. The balance amount due under the cheque is Rs 1,73,000/-. The petitioner has sought for 6 months' time to deposit the said amount which is objected by the learned counsel appearing for the 2nd respondent.

5. Accordingly, the sentence imposed u/s 138 of the N.I Act against the petitioner is modified and the revision petitioner is sentenced to pay a fine of Rs.1,73,000/- only. The said fine shall be paid as compensation u/s 357(1) of the Cr.P.C. The petitioner is permitted either to deposit the said fine

amount before the Court below or to pay the compensation to the 2nd respondent within four months from today and produce a memo to that effect before the trial Court in the case of direct payment. If he fails to deposit or pay the said amount within the aforesaid period, he shall suffer simple imprisonment for a period of three months by way of default sentence.

In the result, the revision petition is disposed of confirming the conviction and sentence but modifying the sentence imposed on the petitioner.

Sd/-
RAJA VIJAYARAGHAVAN.V.
Judge

MrCs

//True Copy//

P.S.ToJudge

The final order in Crl.R.P.428 of 2012 dated 20.8.2015 is corrected and modified as -

“The Revision petitioner is directed to pay a sum of Rs.1,13,000/- to the 2nd respondent as compensation u/s 357(1) of the Cr.P.C. The amount deposited before Court by the petitioner shall be disbursed to the 2nd respondent.”

(vide order dated 14.12.2015 in Crl.M.A.6376 of 2015 in Crl.R.P.428 of 2012.)