

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

Crl.Rev.Pet.No. 1515 of 2009 ()

AGAINST THE JUDGMENT IN CRA 266/2008 of ADDL.DISTRICT COURT
(ADHOC)-II, ALAPPUZHA DATED 11-03-2009

AGAINST THE ORDER/JUDGMENT IN CC 426/2006 of J.M.F.C.-I,
ALAPPUZHA DATED 26-05-2008

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

HARIPRIYAN, AGED 50 YEARS,
S/O.THANKAPPAN, "NANDANAM" SANATHANAPURAM P.O.
KAITHAVANA, ALAPPUZHA.

BY ADV. SRI.B.PRAMOD

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. P.R.GOPAKUMAR, AGED 41 YEARS,
S/O. RAJAPPAN CHETTIAR, SEETHA BHAVAN, KALARKODE
ALAPPUZHA.

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

BY ADV. SRI.JOHN BRITTO FOR R1
BY PUBLIC PROSECUTOR SRI. V.S. SREEJITH FOR R2

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 01-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
Crl.R.P. No. 1515 of 2009
.....

Dated this the 1st day of October, 2015

ORDER

The revision petitioner is the accused in C.C. No. 426 of 2006 on the files of the Court of the Judicial Magistrate of First Class-I, Alappuzha.

2. The trial Court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short "the N.I.Act") and sentenced him thereunder to imprisonment till the rising of the court and to pay a compensation of Rs. 3,50,000/- to the complainant with a default clause for simple imprisonment for five months. The appeal filed by the accused against the said conviction and sentence and the revision petition filed by the complainant praying for enhancement of sentence

Crl.R.P. No. 1515 of 2009

were considered together by the Addl. Sessions Court, Alappuzha. The Addl. Sessions Court dismissed the appeal filed by the revision petitioner and allowed the Revision Petition filed by the complainant enhancing the substantive sentence of imprisonment to simple imprisonment for three months. The compensation and the default sentence were not disturbed. Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

3. The prosecution case is that the revision petitioner issued Exts. P1 to P3 cheques in favour of the complainant towards the discharge of the liability of the revision petitioner to the complainant. The said cheques were dishonoured on presentation for encashment due to insufficiency of funds in the account of the revision petitioner. Statutory notice was issued on behalf of the complainant which was received by the revision petitioner. However, the revision petitioner did not pay the cheque amount within the statutory period or thereafter.

4. Before the court below, PW1 was examined and Exts. P1 to P6 were marked for the complainant. DW1 was examined for

the revision petitioner.

5. The courts below, after evaluating the oral and documentary evidence adduced by the parties, concurrently found that the revision petitioner executed Exts. P1 to P3 cheques as contemplated under Section 138 of the N.I.Act. The defence set up by the revision petitioner was repelled by the courts below. Since there is concurrent finding on facts, this Court will not be justified in interfering with the same, unless the finding is perverse or incorrect. No circumstance has been brought to my notice to indicate that the concurrent finding by the courts below is perverse or incorrect. In the said circumstances, the concurrent finding by the courts below that the revision petitioner committed the offence under Section 138 of the N.I.Act, does not warrant any interference by this Court.

6. The total amount covered by Exts. P1 to P3 cheques is Rs. 3,50,000/-. The appellate court relying on the provisions of Section 354 (4) Cr.P.C. held that the quantum of substantive sentence awarded by the trial Court should have been at least

Crl.R.P. No. 1515 of 2009

three months and accordingly awarded a substantive sentence of imprisonment for three months. Section 354 (4) provides that when the conviction is for an offence punishable with imprisonment for a term of one year or more, and the Court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence unless the sentence is one of imprisonment till the rising of the court or unless the case was tried summarily under the provisions of the Code.

7. This case was tried during 2006. Section 143 (1) of the N.I.Act provides that the provisions of Sections 262 to 265 (both inclusive) of Cr.P.C. shall, as far as may be, apply to the trial of the cases under the Act. The 2nd proviso to Section 143 (1) provides that when at the commencement of, or in the course of a summary trial, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the

Magistrate shall after hearing the parties record an order to that effect and thereafter recall all witnesses who may have been examined and proceed to hear or rehear the case in the manner provided by the Code.

8. In this case, no order was seen passed by the trial Court to the effect that the trial was not a summary trial. That apart, the learned Magistrate awarded only a sentence of imprisonment till the rising of the Court. In the said circumstances, the order passed by the learned Magistrate did not suffer from any illegality, impropriety or incorrectness warranting interference by the learned Sessions Judge. No other convincing reason has been stated by the learned Sessions Judge in modifying and enhancing the sentence to simple imprisonment for three months.

9. Having regard to the facts and circumstances of the case, including the legal position as discussed above and the reasons stated by the appellate court, I am of the view that the sentence of imprisonment awarded by the appellate court cannot be sustained and consequently, the same is set aside, restoring

Crl.R.P. No. 1515 of 2009

the sentence awarded by the trial Court, to secure the ends of justice.

In the result, this Revision Petition stands allowed in part confirming the verdict of guilty and conviction passed by the courts below under Sec. 138 of the N.I. Act. The sentence of imprisonment awarded by the Sessions Court in Crl.R.P. 38/2008 stands set aside and the sentence awarded by the trial court stands restored. The revision petitioner is granted six months' time to pay the compensation.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

Ani/

/truecopy/

P.S. To Judge