

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

Crl.Rev.Pet.No. 2802 of 2009 ()

**AGAINST THE JUDGMENT IN Crl. APPEAL 194/2007 OF THE SESSIONS
COURT, THODUPUZHA, DATED 03-06-2009**

&

**AGAINST THE JUDGMENT IN C.C.68/2003 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT, DEVIKULAM.**

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**K.BALASUBRAMANIAM,
S/o.KITTAPPI NARAYANA SWAMY, THEVARAKKATTU HOUSE,
ATTUKADU KARA, PALLIVASAL ESTATE, DEVIKULAM TALUK.**

**BY ADVS.SRI.T.J.MICHAEL
SRI.SHAJI KURIAN**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. SAJAN GEORGE, S/O.K.R.GEORGE,
KANDOTHUPARAMBIL HOUSE, K.R.COTTAGE,
NEAR ST.MARY'S CHURCH CEMETRY, EDAKOCHI.**

**R1 BY PUBLIC PROSECUTOR SMT. V.H. JASMINE.
R2 BY ADV. SRI.SUMAN CHAKRAVARTHY**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
10-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

SS

K. RAMAKRISHNAN, J.

Crl.R.P.No.2802 of 2009

Dated this the 10th day of February, 2015

ORDER

Accused in C.C.No.68/2003 on the file of the Judicial First Class Magistrate Court, Devikulam, is the revision petitioner herein. The case was taken on file on the basis of a private complaint, filed by the second respondent against the revision petitioner, alleging commission of offence under Section 138 of the Negotiable Instruments Act (hereinafter called 'the Act').

2. The case of the complainant in the complaint was that, himself and his mother had agreed to sell 14.5 cents of land in Munnar, to the brother of the revision petitioner and Ext.P1 agreement was executed and they have executed the sale deed on 06.04.2002 in favour of the revision petitioner and his brother, Padmanabhan and Ext.P2 post dated cheque of ₹3,50,000/- was issued by the revision petitioner in favour of the complainant on the same day, towards the balance consideration agreed due in the transaction. The brother of the revision petitioner/

Padmanabhan also issued another cheque for the same amount on the same day towards the balance consideration. When the cheque was presented for encashment, the same was dishonoured for the reasons 'funds insufficient', vide Ext.P3 dishonor memo. Ext.P4 notice was issued vide Ext.P5 postal receipt to the revision petitioner, intimating the dishonour and requesting the revision petitioner to pay the amount, but it was returned with postal endorsement 'unclaimed' evidenced by Ext.P6 postal acknowledgment. Ext.P7 is the true extract of the account of the revision petitioner maintained to show that there was no sufficient funds in his account to honour the cheque when it was presented for collection and Ext.P8 and P8(a) are the certified copies of the agreement representing Ext.P1 agreement. The revision petitioner 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, PWs 1 to 5 were examined and Exts.P1 to P8 and P8(a) were marked on his 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 issued as a security for the performance of Ext.P1 agreement and thereafter it resulted in execution of Exts. D1 and D2 sale deeds and the entire consideration has been paid and the cheque was not returned and mis-using the cheque, the present complaint has been filed. Except marking these documents, no other evidence was adduced on the side of the defence. After considering the evidence on record, the trial court 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 three months and also to pay a compensation of ₹3,50,000/- to the complainant, but no default sentence was awarded. Aggrieved by the same, the revision petitioner filed Crl.Appeal No.194/2007 before the Sessions Court, Thodupuzha and the learned Sessions Judge by the impugned order dismissed the appeal, confirming the order of conviction and sentence passed by the court below. Dissatisfied with the same, the present revision has been filed by the revision petitioner/accused before the court below.

4. When the revision petition came up for hearing today, the counsel for the revision petitioner submitted that, the entire compensation amount has been realised by depositing ₹1,00,000/- as per the orders of this court and also by initiating revenue recovery proceedings, an amount of ₹2,50,000/- was recovered and the same was

deposited in court and he is not challenging the conviction, but he want leniency in the sentence.

5. Heard the counsel for the second respondent and Public Prosecutor.

6. On going through the evidence adduced on the side of the complainant and the nature of defence taken by the revision petitioner, this court felt that, there is nothing to be interfered with the finding of the court below that the revision petitioner had committed the offence punishable under Section 138 of the Act, as the disputed cheque was issued not as a security as contended by the counsel for the petitioner, but for repayment of the balance consideration payable as agreed between the parties in Ext.D1 and D2 sale deeds were executed. So the conviction entered by the court below is perfectly justifiable.

7. As regards the sentence is concerned, the court below had sentenced him to undergo simple imprisonment for three months and also to pay a

compensation of ₹3,50,000/- to the complainant. This was confirmed by the appellate court. The counsel for the revision petitioner submitted that ₹1,00,000/- was deposited as directed by this court for suspending the sentence and ₹2,50,000/- was recovered by initiating revenue recovery proceedings, a report has been called for from the concerned court and this was confirmed by the court below by the letter dated 09.02.2015 and 10.02.2015. Since the compensation amount has already been recovered by initiating revenue recovery proceedings and also by depositing a portion of the amount as directed by this court and also considering the fact that the civil wrong has become a criminal offence by virtue of the enactment of Section 138 of the Negotiable Instruments Act, as observed by the Hon'ble Supreme Court in the decision reported in **Damodar S. Prabhu v. Sayed Babalal H. [JT 2010 (4) (S.C.)457]** and **Kaushalya Devi Massand v. Roopkishore (AIR 2011 (S.C.) 2566)**, this court feels

that, retaining the compensation and reducing the substantive sentence to imprisonment till rising of the court will be sufficient and that will meet the ends of justice. While confirming the order to pay compensation of ₹3,50,000/- to the complainant under Section 357(3) of the Code of Criminal Procedure, the substantive sentence is reduced to imprisonment till rising of the court. So the sentence is modified as follows:

The revision petitioner is sentenced to undergo imprisonment till rising of the court and also to pay a compensation of ₹3,50,000/- to the complainant under Section 357(3) of the Code of Criminal Procedure. If the amount has already been recovered, then the revision petitioner is directed to serve the substantive sentence of imprisonment till rising of the court and close the case. Revision petitioner is directed to appear before the court below on 02.03.2015 to serve the

sentence, 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

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P.A. to Judge

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