

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

Crl.Rev.Pet.No. 47 of 2013 ()

AGAINST THE JUDGMENT IN CRA 547/2010 of COURT OF ADDL.DISTRICT JUDGE,
MAVELIKKARA DATED 30.1.2012

AGAINST THE JUDGMENT IN ST 68/2009 of COURT OF JUDICIAL FIRST CLASS
MAGISTRATE-III, MAVELIKKARA DATED 20.9.2010

REVISION PETITIONER/APPELLANT/ACCUSED:

REGHU.S., KALALAYAM
PRAIKARA P.O, MAVELIKARA 690101

BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

- 1. M/S.GRAND KURIES & LOANS
REPRESENTED BY SUNIL KUMAR,
MANAGING PARTNER, MAVELIKARA 690101.
2. THE STATE OF KEREALA
REPRESENTED BY ITS PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
R1 BY ADV. SRI.A.R.DILEEP
R1 BY ADV. SRI.MANU SEBASTIAN
R2 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
09-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.R.P.No.47 of 2013

Dated 9th January, 2015

ORDER

This revision petition has been filed against the judgment in Crl.A.No.547 of 2010 of the Court of Additional District Judge Fast Track (Adhoc), Mavelikkara confirming the conviction and the sentence imposed by the Court of Judicial First Class Magistrate-III, Mavelikkara in S.T.No.68 of 2009. Originally, the complaint filed by the first respondent herein was taken on file and registered as S.T.No.463 of 2008 in the Court of Judicial First Class Magistrate-I, Mavelikkara and thereafter it was transferred to the Court of Judicial First Class Magistrate-III, Mavelikkara and re-numbered as S.T.No.68 of 2009. The case of the first respondent/complainant was that the accused and his wife were subscribers to Chitty No.9M1-01 with Nos.287, 307, 308, 325 and 354. On account of their chronic default in effecting payment towards the chitty bid by them the first respondent resorted to coercive steps for realising the amount. In discharge of the legally enforceable debt towards the first respondent a cheque for an amount of ₹4,95,770/- was issued by the revision petitioner/accused on 15.1.2008. The said cheque on its presentation was dishonoured on the

ground of insufficiency of fund in the account maintained by the revision petitioner. Thereupon, the first respondent issued statutory notice intimating him of the factum of dishonour of the cheque and calling upon him to pay the amount due. It is the failure on the part of the revision petitioner to pay off the debt within the statutorily stipulated period that constrained the first respondent to file the aforesaid complaint. On due process the revision petitioner appeared before the Court and the particulars of the charge were read over and explained to him and he pleaded not guilty and claimed to be tried. On the side of the complainant PW1 was examined and Exts.P1 to P7 were marked to prove the charge against the revision petitioner. After the 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. The revision petitioner got himself examined as DW1 and got marked Exts.D1 to D8. After evaluation of the evidence of both sides the trial court found that the complainant has succeeded in proving that the revision petitioner herein had committed the offence under Section 138 of the Negotiable Instruments Act and consequently found him guilty thereunder. Accordingly, he was convicted thereunder and was sentenced to undergo simple imprisonment for a period of eight months and to pay a compensation of ₹ 3,15,000/- to the complainant under

Section 357(3), Cr.P.C. and in default of payment of compensation to undergo simple imprisonment for a further period of five months. The revision petitioner herein took up the matter in appeal as Crl.A.No.547 of 2010. Though various grounds were raised by the revision petitioner herein the appellate court found that the conclusions and findings of the trial court are in tune with the evidence adduced and consequently, dismissed the appeal confirming the conviction as also the sentence. The captioned revision petition has been filed in the said circumstances.

2. I have heard the learned counsel for the revision petitioner, the learned counsel for the first respondent and also the learned Public Prosecutor.

3. The learned counsel appearing for the revision petitioner submitted that pending the revision petition the revision petitioner was arrested on 22.12.2014 and he has been undergoing the sentence of simple imprisonment in Poojappura Central Prison, Thiruvananthapuram. Owing to the subsequent developments the revision petitioner is not intending to press the contentions raised in the revision petition and he is prepared to pay the amount of compensation directed to be paid to the complainant viz., ₹ 3,15,000/- under Section 357(3) Cr.P.C. The

learned counsel further submits that taking into account the spirit of the decision of the Hon'ble Apex Court in **Damodar S.Prabhu v. Sayed Babalal H. (AIR 2010 SC 1907)** that the compensatory aspect has to be looked into in a case under Section 138 of the Negotiable Instruments Act, the substantive sentence imposed on the revision petitioner may be reduced, considering his readiness to pay the amount of compensation, as ordered. The learned counsel further submitted that two months' time may be granted to the revision petitioner to pay off the amount of compensation as ordered. Having heard the learned counsel appearing for the first respondent as well, on the above submissions I am inclined to dispose of this revision petition as hereunder:-

In the light of the dictum laid down by the Hon'ble Apex Court in **Damodar S.Prabhu's** case (supra) it is not the penal aspect that is to be looked into in a proceedings under Section 138 of the Negotiable Instruments Act, whilst, it should be the pecuniary aspect. Evidently, as per the impugned judgment in the appeal the conviction as also the direction to pay compensation of ₹ 3,15,000/- under Section 357(3) Cr.P.C. were confirmed. There cannot be any doubt with respect to the position that re-appreciating the evidence for the purpose of interfering with the concurrent finding of conviction is permissible only on

certain limited grounds. The revision petitioner has no case that the trial court as also the appellate court were not properly evaluated the evidence. So, it cannot be said that the conclusions and findings of the trial court as also the appellate court are against the weight of evidence. In short, the revision petitioner has not made out any ground for interfering with his conviction under Section 138 of the N.I. Act. At the same time, taking note of the submissions made hereinbefore and in the light of the decision in **Damodar S.Prabhu's** case (supra) I am of the view that while confirming the conviction concurrently entered against the revision petitioner the substantive sentence imposed on him can be modified.

In the result, this Criminal Revision Petition is allowed in part as hereunder:-

(1) The conviction of the revision petitioner under Section 138 of the Negotiable Instruments Act is confirmed.

(2) The substantive sentence of imprisonment imposed against the revision petitioner is modified and limited to the sentence already undergone.

(3) The order to pay compensation of ₹ 3,15,000/- to the complainant under Section 357(3) Cr.P.C. is confirmed.

However, the petitioner is granted two months' time from today to pay the amount of compensation. In the event of the petitioner making default in payment of the amount of compensation within the above stipulated period he has to undergo the default sentence as ordered by the appellate court. In the said circumstances, the petitioner who is undergoing the imprisonment in Central Prison Poojappura shall be set at liberty, in case his custody is not warranted in connection with any other case.

Sd/-
C.T.RAVIKUMAR
Judge

TKS