

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

Crl.Rev.Pet.No. 2559 of 2012 ()

AGAINST THE JUDGMENT IN CRL.APPEAL 391/2012 of SESSIONS COURT
(SPL.COURT FOR TRIAL FOR MARADU CASES)KOZHIKODE, DATED 27-09-2012

AGAINST THE JUDGMENT IN ST 9105/2011 of J.M.F.C.-II(MOBILE)KOZHIKODE
DATED 14-03-2012

REVISION PETITIONER/RESPONDENT/ACCUSED:-

K.T.RAVEENDRAN, AGED 60 YEARS
S/O.GOVINDAN, RETEK CYBER COLLEGE, NEAR POST OFFICE
FEROKE, KOZHIKODE DISTRICT.

BY ADVS.SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P

RESPONDENTS/APPELLANT/COMPLAINANT AND STATE:-

1. ARAVINDAKSHAN.P.K., , AGED 54 YEARS
S/O.A.K.K.NAMBIAR, HARSHA, CHUNGAM
FEROKE COLLEGE ROAD, FEROKE, KOZHIKODE.
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, COCHIN - 682 031.

R1 BY ADV. SRI.AVM.SALAHUDIN
R2 BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 16-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No. 2559 of 2012

Dated this the 16th day of October, 2015

ORDER

The revision petitioner is the accused in ST No.9105/2011, on the files of the Court of the Judicial Magistrate of First Class-II, Kozhikode.

2. The 1st respondent herein filed a complaint against the revision petitioner before the trial court under Section 138 of the Negotiable Instrument Act. After the trial, the trial court acquitted the revision petitioner under Section 255(1) Cr.PC. Against the said acquittal, the 1st respondent herein filed an appeal before the Sessions court. The Sessions court reversed the order of acquittal and convicted the revision petitioner. The Sessions Court sentenced the revision petitioner to a fine of Rs.2,36,000/- with a default clause for simple imprisonment for two months. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard the learned counsel for the revision petitioner and the learned counsel for the 1st respondent. I have also heard the learned Public Prosecutor.

4. It has been argued by the learned counsel for the revision petitioner that the appeal filed by the 1st respondent herein, before the Sessions Court, challenging the order of acquittal passed by the trial court in a case under Section 138 of the NI Act, was not maintainable in view of the provisions of Section 378(4) of the Code and consequently, the judgment of the Sessions Court cannot be sustained. The learned counsel for the 1st respondent has argued that the revision petitioner should have raised that contention before the Sessions Court and since the revision petitioner did not raise any such contention before the Sessions Court, the revision petitioner cannot be heard to say at the revisional stage that the judgment of the Sessions Court is not legal, proper and correct.

5. Section 378(4) Cr.PC provides that if an order of acquittal is passed in any case instituted upon a

complainant, and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court. It is clear from Sub clause (4) of Section 378 Cr.PC that the remedy of the complainant in a case under Section 138 of NI Act to challenge the order of acquittal is, to approach the High Court with a special leave petition as provided under Section 378 (4) Cr.PC.

6. In view of the above said provisions, I have no doubt that the appeal filed before the Sessions Court, challenging the order of acquittal was not maintainable. Therefore, the argument advanced by the learned counsel for the 1st respondent in this regard fails. The above view is supported by the decision of this Court in **Omana Jose v. State of Kerala [2014(2) KLT 504]**, which states that the complainant in a case under Section 138 of the NI Act cannot challenge the order of acquittal before the Sessions court under proviso to Section 372 of the Code and his

remedy is only to file an appeal to the High Court with special leave under Section 378 of the Code. In view of the above reason, the judgment of the Sessions Court cannot be sustained and consequently, I set aside the same.

7. In the result, this revision petition stands allowed, setting aside the conviction and sentence passed by the Sessions Court and restoring the order passed by the trial court acquitting the revision petitioner under Section 255 (1) Cr.PC.

Needless to state that this order will not preclude the 1st respondent from seeking remedy, if any, available to him to challenge the order of acquittal passed by the trial court.

Sd/-
B.SUDHEENDRA KUMAR
JUDGE

sm