

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

Crl.Rev.Pet.No. 1 of 2015 ()

AGAINST THE JUDGMENT IN CRA 293/2013 of ADDL. SESSIONS COURT-II
(SPECIAL), KOTTAYAM DATED 26-09-2014
ST 123/2012 of J.M.F.C-III, KANJIRAPPALLY DATED 29-07-2013

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

JAYAN T.K, AGED 43 YEARS
S/O.KUTTAPPAN, THOPPIL HOUSE, KANJIRAPPALLY P.O.
KANJIRAPPALLY.

BY ADV. SRI.V.K.SUNIL

RESPONDENT(S)/RESPONDENTS & COMPLAINANT:

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1. THE KOTTAYAM DISTRICT CO-OPERATIVE BANK LTD.
REPRESENTED BY ITS BRANCH MANAGER, EVENING BRANCH
KANJIRAPPALLY - 686 507.
 2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
05-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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Crl.R.P. No.1 OF 2015

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Dated this the 5th day of January, 2015

ORDER

The captioned revision petition is filed against judgment dated 26.9.2014 in Crl.Appeal No.293 of 2013 of the Court of Additional Sessions Judge-II (Special), Kottayam confirming the conviction and modifying the sentence in the judgment dated 29.7.2013 in S.T.No.123 of 2012 passed by the Court of Judicial First Class Magistrate-III, Kanjirappally. The petitioner was tried for offence under section 138 of the Negotiable Instruments Act. He availed an ordinary loan for ₹40000 from the first respondent bank. Chronic default in the matter of its repayment constrained the first respondent to resort to coercive proceedings. Despite receipt of notice calling upon the petitioner to repay the amount, he failed to pay the amount in cash whilst he issued cheque dated 27.9.2009 drawn on the Indian Overseas Bank, Kanjirappally to the first respondent for discharging the said legally enforceable debt.

However, it was dishonoured on its presentation for encashment on the ground of insufficiency of funds. Thereupon, the first respondent caused issuance of statutory notice and informed the petitioner regarding the bouncing of the cheque and also required the petitioner to pay the amount covered by the cheque. It is the failure on the part of the petitioner to pay the amount covered by the said cheque within the statutorily prescribed period that constrained the first respondent to file the complaint which was ultimately taken on file as S.T.No.123 of 2013 by the Court of Judicial First Class Magistrate-III, Kanjirappally. On due process, the petitioner/accused entered appearance and he was furnished with copies of all relevant records and charge was read over and explained to him. The petitioner pleaded not guilty and claimed to be tried. Thereupon, PWs 1 and 2 were examined and Exts.P1 to P10 were marked on the side of the complainant/first respondent. On closure of the complainant's evidence, the petitioner herein was questioned under section 313 Cr.P.C and all the incriminating circumstances put to him were denied.

On being asked to enter on his defence, the petitioner did not adduce any evidence, either oral or documentary. After appreciating the evidence, the learned Magistrate found the petitioner guilty under section 138 of the NI Act and convicted him thereunder and sentenced to undergo simple imprisonment for two months and to pay an amount of ₹49000 with interest @ 9% from 22.9.2009 till 29.7.2013 viz., ₹66000. In default of payment of the said amount, the petitioner was directed undergo simple imprisonment for a further period of six months. The amount, on realisation, was directed to be paid to the first respondent under section 357 (1) Cr.P.C. Aggrieved by the said judgment, the petitioner took up the matter in appeal as CrI.A.No.293 of 2013 which led to passing of the impugned judgment by the Court of Additional Sessions Judge-II (Special), Kottayam. In the context of the contentions it is relevant to refer to paragraph 12 of the judgment by the appellate court and it reads thus:-

“Though several contentions were raised by the appellant in the appeal memorandum challenging the sentence recorded by the lower

court, the learned counsel for the appellant did not argue the case on merit by submitting that the appellant is ready to pay back the amount within three months and hence prayed for leniency with respect to the substantive sentence imposed by the lower court. Therefore, I have gone through the records and analysed the evidence so as to satisfy myself about the sustainability of conviction recorded by the trial court.”

(emphasis added)

2. It is evident from the said paragraph that despite raising various grounds to assail the judgment of the trial court entering conviction, those grounds were not actually pressed into service and what was submitted before the appellate court was that the petitioner/appellant was ready to pay back the amount in three months and accordingly, prayed for leniency with respect to the substantive sentence. Taking note of the said submission and after considering the evidence, the appellate court found that in a prosecution under section 138, the compensatory aspect of the remedy should be given much priority over the punitive aspect and confirmed the conviction, but

modified the sentence by setting aside the substantive sentence of imprisonment as per judgment dated 26.9.2014. It is to be noted that the trial court convicted the petitioner and sentenced him to undergo simple imprisonment for two months and the submission made by the petitioner herein as aforesaid weighed with the appellate court to modify the sentence while confirming the conviction. In view of the submission made by the revision petitioner as recorded in paragraph 12 and even after considering his contentions I do not find any merit in this revision petition and I am constrained to hold that no case was made out by the petitioner to make this Court to invoke the revisional jurisdiction. The findings of the courts below that the petitioner is guilty under section 138, NI Act is returned obviously after a careful and true appreciation of evidence on record. The appellate court set aside the substantive sentence and retained the sentence of fine. In such circumstances, I do not find any ground for interfering with the sentence imposed on the petitioner for conviction under section 138, NI Act. When this Court was about to dispose of the matter, in

accordance with the view made hereinbefore, the learned counsel for the petitioner submitted that considering the straitened circumstances which the petitioner is facing he may be granted three months time, as last chance, to pay off the amount in tune with the directions in the judgment of the appellate court. In the circumstances, I am inclined to grant some time and the learned Magistrate is directed to keep in abeyance execution of sentence till 28.3.2015 to enable the petitioner to pay the amount of fine as ordered on or before 28.3.2015, to release it to the complainant under section 357(1) (b) Cr.P.C. It is made clear that in case the petitioner fails to pay the amount within the stipulated time, the learned Magistrate shall take appropriate steps to execute the sentence, in accordance with law. Subject to the above, this revision petition is dismissed.

Sd/-
C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010