

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. 6 of 2015

**AGAINST THE JUDGMENT IN CRL.A.NO. 657/2012 OF ADDITIONAL SESSIONS COURT
FAST TRACK(ADHOC)-II, KOZHIKODE**

**AGAINST THE JUDGMENT IN C.C.NO.39/2012 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT-II, VADAKARA**

REVISION PETITIONER(S)/APPELLANT/ACCUSED :

**PRAKASH NARAYANAN, AGED 36 YEARS,
S/O.C.NARAYANA KURUP, VARAPRAVANAM HOUSE, THIMIRI P.O.,
CHERUVATHUR VIA, KASARAGOD DISTRICT.**

**BY ADVS.SRI.S.U.NAZAR
SRI.MANSOOR.B.H.**

RESPONDENT(S)/COMPLAINANT & STATE :

**1. PMADHUSOODHANAN,
S/O.GOPALAKRISHNA KURUP, KALARIYIL HOUSE,
CHORODE P.O., CHENDAMANGALAM, VADAKARA TALUK,
KOZHIKODE DISTRICT, PIN - 673 106.**

**2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031.**

**R1 BY ADV. SRI.MOHANAN V.T.K.
R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 09-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Msd.

C.T.RAVIKUMAR, J

Crl.R.P. No.6 of 2015

Dated this the 9th day of January, 2015

ORDER

This criminal revision petition is directed against the judgment of the court of the Additional Sessions Judge, Fast Track (Adhoc)-II, Kozhikode in Crl.A.No.657/2012 whereby the judgment convicting the petitioner for the offence under section 138 of the Negotiable Instruments Act, passed by the court of the Judicial First Class Magistrate Court-II, Vadakara in C.C.No.39/2012 was confirmed and the sentence imposed therefor, was modified. The case of the prosecution is that on 30.9.2006 the revisionist/accused borrowed a sum of Rs. 1,50,000/- from the complainant/the first respondent on assurance to repay it within three months and to discharge the said legally enforceable debt Ext.P1 cheque dated 30.12.2006 drawn on State Bank of Travancore, Thrikkarippur Branch was issued. Ext.P1 cheque on presentation for encashment was dishonoured on the ground of 'insufficiency of fund' in the account of the revisionist. Thereupon, the first respondent issued statutory notice intimating the petitioner

regarding the factum of dishonour of the cheque and calling upon him to pay the amount due. Since, the amount was not repaid despite the lapse of the statutory period, after complying with the procedures, the first respondent filed a complaint which was taken on file and numbered as C.C.No.383/2012. Subsequently, the case was transferred from Chief Judicial Magistrate Court, Kozhikode to Court of the Judicial First Class Magistrate-I, Vadakara and was renumbered as C.C.No.39/2012. On due process the revision petitioner appeared before the trial court and the particulars of offence were read and explained to him and he pleaded not guilty. On the side of the complainant he was examined as PW1 and Exts.P1 to P6 were marked. After the closure of the evidence of the complainant incriminating circumstances were put to the revision petitioner under section 313 of the Code of Criminal Procedure and he denied all such circumstances. No defence evidence was adduced by him. After careful evaluation of evidence based on the oral testimony of PW1 and the contemporaneous documents the trial court found the petitioner guilty under section 138 of the N.I. Act and convicted him thereunder and sentenced to undergo simple imprisonment for three months and to pay a fine of Rs.1,50,000/-.

It was further ordered that the fine amount, if realised, shall be paid to the complainant under section 357 (1)(b) of the Cr.P.C. In default of payment of fine the accused was directed to undergo simple imprisonment for a period of two months. The petitioner took up the matter in appeal as Crl.A.No.657/2012. The appellate court considered the contentions and also the evidence on record and found that the conclusions arrived at by the trial court for finding that the petitioner is guilty and the consequential conviction require no interference. At the same time, the appellate court interfered with the sentence imposed therefor, and modified it to undergo simple imprisonment for one month and to pay a fine of Rs.2,17,500/- and in default to undergo simple imprisonment for three months. The entire fine amount if realised was ordered to be paid to the complainant/the accused under section 357(1)(b) Cr.P.C. The captioned revision petition has been filed against the said judgment.

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

3. Evidently, in this case the trial court as also the

appellate court concurrently entered conviction against the revision petitioner. There cannot be any doubt with respect to the position that in such circumstances, revisional jurisdiction is not to be invoked and in fact, cannot be invoked only to correct a wrong appreciation of evidence as this Court is not required to act as a court of appeal and in otherwords, such interference is called for to correct any manifest illegality resulting in gross miscarriage of justice. I have considered the judgment of the trial court which was affirmed by the appellate court I do not find any such error infecting the impugned judgment warranting exercise of revisional jurisdiction as regards the conviction. At the same time, the appellate court found it fit to interfere with the sentence imposed by the trial court and consequently reduced it to a sentence to undergo simple imprisonment for a period of one month and the fine imposed by the trial court was enhanced from 1,50,000/- to 2,17,500/-. Evidently, the appellate court was guided by the settled position that in a case of dishonour of cheque the pecuniary aspects have to be given priority over the punitive aspect. In the circumstances considering the fact that the cheque amount is only Rs.1,50,000/- and that the appellate court enhanced the amount of

fine to Rs.1,50,000/- to 2,17,500/- I am of the view that the substantive sentence requires further modification. Hence, while confirming the conviction and also the sentence imposing a fine of Rs.2,17,500/- the substantive sentence requires a further modification to one to undergo simple imprisonment till the rising of the court. The learned counsel for the petitioner submits that taking into the straighten circumstances some time may also be granted to the petitioner for effecting the payment. Having heard the learned counsel appearing for the first respondent I am inclined to allow this revision petition in part as hereunder:-

1. The conviction of the revision petitioner under section 138 of the N.I.Act entered concurrently by the courts below is confirmed.
2. The sentence to undergo simple imprisonment for one month is modified as imprisonment till rising of the court.
3. The sentence to pay fine of Rs.2,17,500/- and the petitioner is directed to undergo simple imprisonment for a period of three months is confirmed.
4. In the meanwhile, the petitioner shall appear before the trial court on or before 09.02.2015, to undergo imprisonment till the rising of the court.

It is ordered that the petitioner shall deposit an amount of Rs.50,000/- on or before 9.2.2015 towards the fine to be disbursed to the first respondent/complainant on the date of appearance to suffer the sentence and to deposit the balance amount in four equal monthly instalments on the 9th day of the subsequent months. In case of failure on the part of the petitioner to deposit the amount of Rs.50,000/- on or before 9.2.2015 the learned magistrate shall take appropriate steps, in accordance with law, for execution of the sentence. The amount of fine, if realised, shall be paid to the complainant as ordered by the courts below under section 357(1)(b) Cr.P.C.

Sd/-

C.T.RAVIKUMAR,JUDGE.

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