

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

Crl.Rev.Pet.No. 7 of 2015 ()

AGAINST THE JUDGMENT IN C.C.No.921/2010 of JUDICIAL FIRST CLASS
MAGISTRATE - VI, ERNAKULAM DATED 21-10-2014

REVISION PETITIONER(S)/COMPLAINANT:

LILLY PETER, AGED 71 YEARS
W/O. LATE P.M. PETER, PANIKKASERY HOUSE
KALATHIPARAMBU ROAD, VADUTHALA, ERNAKULAM.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENT(S)/ACCUSED AND STATE:

1. N.G.MARY ELIZEBETH
MANGAZHA HOUSE, DOOR NO. 11, NEHRU ROAD
Ayyappan kavu, KOCHI - 682 018.
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY GOVERNMENT PLEADER SMT. SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 06-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

dlk

C.T.RAVIKUMAR, J

Crl.R.P. No. 7 of 2015

Dated this the 6th day of January, 2015

ORDER

The captioned revision petition has been filed against the judgment of the court of the Judicial First Class Magistrate-VI, Ernakulam in C.C.No.921/2010 dated 21.10.2014. The petitioner was the complainant therein. The case of the petitioner was that the accused/ the first respondent borrowed an amount of Rs.1,60,000/- from him on the assurance that the amount would be repaid on or before 15.3.2006. It is the further case that in discharge of the said legally enforceable debt Ext.P1 cheque dated 15.3.2006 was issued. When the said cheque was presented for encashment it was dishonoured on the ground of 'insufficiency of fund'. After issuing statutory notice within the prescribed time limit informing the accused regarding the factum of dishonour of cheque and calling upon him effect payment of the amount and upon the failure of the first respondent to repay the amount covered by the said cheque within the statutorily permitted period the petitioner filed the complaint which was, later, taken into file and numbered as C.C.No.921/2010. After due process the accused/ the first

respondent entered appearance and the particulars of charge was read over and explained to him and he pleaded not guilty. To substantiate the charge the petitioner herein got himself examined as PW1 and Exts. P1 to P7 were marked on his side. After the closure of the evidence of the petitioner herein, the accused was questioned under section 313 of the Code of Criminal Procedure and all the incriminating circumstances put to him were denied by him. No defence evidence was adduced by the accused. After hearing the rival contentions and appreciating evidence the learned magistrate passed the impugned order whereby the first respondent/ the accused was found guilty under section 138 of the negotiable Instruments Act and convicted thereunder. Upon such conviction he sentenced to pay a fine of Rs.1,70,000/-. In default of payment of fine the accused/first respondent was directed to undergo simple imprisonment for a further period of six months. The amount of fine if realised was directed to be paid to the petitioner/the complainant, as compensation under section 357(1)(b) of Cr.P.C. The captioned revision petition has been filed seeking enhancement of the sentence of fine imposed on the first respondent.

2. A careful consideration of the order passed by the learned magistrate would reveal that the first respondent herein/the accused took up the contention that no amount was actually borrowed by her from the petitioner herein and the complainant had obtained a blank cheque from her on the assurance that the amount would be paid to her. It is the further contention that no amount was actually received by the first respondent. It is evident that the learned magistrate found that the cheque in question was executed by the first respondent for the purpose of discharging a legally enforceable debt. The defence set up by the first respondent was found not believable and after evaluating the evidence the learned magistrate found the accused guilty and upon conviction under section 138, N.I.Act he was sentenced as aforesaid. The petitioner has not divulged whether the accused took up the matter in appeal and if so, what is its outcome. Therefore, I do not propose to consider or comment upon the sustainability of the findings of the learned magistrate to prejudice the accused. Having said so, I will proceed to consider the case of the petitioner. The contention of the petitioner is that though the amount covered by the cheque is

Rs.1,60,000/- the court ordered only an amount of Rs.1,70,000/- as compensation. A perusal of the judgment of the trial court would reveal that compensation was ordered under section 357(1)(b), Cr.P.C. The power of court to award compensation was intended to do something to re-assure the victim that he/she is not forgotten by the criminal justice. But, at the same time, while passing such an order the ability and capacity of the accused to pay the said amount are also be taken into account otherwise, the very purpose of awarding compensation would stand defeated. In this case the amount covered by the cheque is Rs.1,60,000/-. The learned magistrate sentenced the petitioner to pay a fine of Rs.1,70,000/- and the entire amount of fine was ordered to be paid to the complainant/the petitioner as compensation under section 357(1)(b) of Cr.P.C. There is no basis for the contention of the petitioner that the first respondent should have been sentenced to pay a fine more than Rs,1,70,000/-. Taking into account the fact that the entire amount which is more than the amount covered by the cheque in question was ordered to be paid as fine and the entire amount of fine was ordered to be paid as compensation to the petitioner I do not

think that there is any scope for a further enhancement of the sentence. It cannot be said that the learned magistrate has committed a flow warranting interference in exercise of the revisional jurisdiction. In the said circumstances, this revision petition is fails and accordingly it is dismissed.

Sd/-

C.T.RAVIKUMAR,JUDGE.

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