

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. 11 of 2015 ()

AGAINST THE JUDGMENT IN CRL.A.142/2013 of DISTRICT AND SESSIONS
COURT, KOTTAYAM DATED 18-09-2014

AGAINST THE JUDGMENT IN S.T.No. 131/2012 of JUDICIAL FIRST CLASS
MAGISTRATE-III, KANJIRAPPALLY DATED 29.4.2013

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

K.V.CYRIAC, S/O.APPACHAN AGED 39 YEARS
KARAKKATTU HOUSE, THAMPALAKKADU P.O,
THUNDUVELI BHAGOM
KANJIRAPPALLY.

BY ADVS.SRI.SANTHARAM.P
SMT.REKHA ARAVIND
SMT.T.S.REMYA

RESPONDENT(S)/COMPLAINANT & STATE:

1. JIJI SUDARSANA LAL, AGED 45 YEARS
W/O.SUDARSANA LAL, KANDATHIL HOUSE
PALAPRA P.O. KOTTAYAM DISTRICT.

2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR 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.11 of 2015

Dated this the 6th day of January, 2015

ORDER

This revision petition is directed against the judgment dated 18.09.2014 in Crl.A.No.142/2013 passed by the court of the Sessions, Kottayam confirming the conviction but modifying the sentence imposed by the judgment in S.T.No.131/2012 of the court of the Judicial First Class Magistrate-III, Kanjrappally. The petitioner/accused was tried for offence under section 138 of the Negotiable Instruments Act(for short 'the N.I.Act'). The first respondent herein who was the complainant filed the complaint alleging that the petitioner herein borrowed an amount of Rs.1,00,000/- from him on 14.11.2010 and upon demand for its repayment the petitioner issued Ext.P1 cheque dated 20.12.2010 for Rs.1,00,000/- in discharge of the said legally enforceable debt. The case of the first respondent is that the said cheque on its presentation for encashment was dishonoured for the reason that the accused has 'closed his account'. Thereupon, the first respondent/the complainant sent a lawyer notice intimating the petitioner regarding the dishonour of the cheque and demanding

repayment of the amount covered by the cheque. It is the failure on the part of the petitioner to repay the amount covered by the said cheque within the statutorily prescribed period that constrained the first respondent to file the complaint which was later taken into file and registered as S.T No.131/2012. The petitioner entered appearance on obtaining due process before the trial court. To prove the charge against the petitioner the first respondent/complainant got herself examined as PW1 and got marked Exts.P1 to P6. On closure of the evidence of the complainant the petitioner was examined under section 313 Cr.P.C. and all the incriminating circumstances were put to him. The petitioner denied all such incriminating circumstances. However, the petitioner did not adduce any evidence in defence, either oral or documentary. After hearing the arguments advanced by both side and evaluating the evidence the trial court found the petitioner guilty under section 138 of the N.I.Act and convicted him thereunder. Upon such conviction he was sentenced to undergo simple imprisonment for a period of six months and to pay compensation of Rs.1,00,000/- and in default of payment of the

said compensation to undergo simple imprisonment for a further period of six months. Aggrieved by the said judgment the petitioner took the matter in appeal as Crl.A.No.142/2013. Evidently, the petitioner reiterated the defence which he had taken up before the trial court to mount challenge against the judgment of conviction and the order of sentence passed by the trial court. The appellate court found no merit in the contentions raised by the petitioner to interfere with the conviction and therefore confirmed the conviction. However, the appellate court set aside the substantive sentence viz., sentence to undergo six months simple imprisonment and at the same time, modified the sentence to pay a fine of Rs. 1,33,000/- and ordered that in default of payment of fine the petitioner must undergo simple imprisonment for a period of three months. The captioned revision petition has been filed against the said judgment passed by the Court of Session, Kottayam in Crl.A.No.142/2013.

2. I have heard the learned counsel for the petitioner.

3. It is well nigh settled that concurrent finding of

conviction would be interfered with only if the trial court and/or the appellate court appreciated the evidence in an utterly perverse manner or conclusions arrived at by the courts below are against the weight of evidence. It is to be noted that the revisional power does not create any right on the litigant, but it only confers the power in the High Court to see that justice is done in accordance with the recognized rules of criminal jurisdiction and the subordinate courts do not exceed their jurisdiction or abuse their powers vested in them by the code in hearing and determining cases. In this case having heard the learned counsel for the petitioner and perusing the judgments under challenge I am of the considered view that the petitioner has failed to bring out a case warranting interference by this Court exercising the revisional jurisdiction. In otherwords, the petitioner is failed to establish that the trial court and/or the appellate court appreciated the evidence in a perverse manner or that their conclusions are against the weight of evidence. In short, no case has been brought out to doubt the correctness, legality or propriety of any finding. In the said circumstances I have no hesitation to hold that this Court will not

be justified in interfering with a judgment of conviction entered against the petitioner based on the evidence on record in exercise of the revisional jurisdiction. The appellate court, virtually, borne in mind the position that in a case of dishonour of cheque the compensatory aspect of the remedy should be given priority over the punitive aspects and accordingly set aside the substantive sentence and at the same time, enhanced the amount of fine imposed on the revision petitioner from Rs,1,00,000/- to 1,33,000/- and also ordered that the revision petitioner must undergo simple imprisonment for three months in case of default in payment of fine. The amount of fine was ordered to be paid to the first respondent as compensation under section 357(1)(b), Cr.P.C. Considering the fact that the substantive sentence was set aside and that the cheque amount is Rs.1,00,000/- I do not find any illegality or impropriety or incorrectness in the order of sentence passed by the appellate Court. When this Court was about to dismiss of this matter in the view as stated above the learned counsel for the petitioner submitted that taking into account the straitened circumstances the petitioner may be granted some

reasonable time to pay the amount of fine. Taking into account the said limited prayer I think it only appropriate and in interest of justice grant a period of three months for the petitioner to effect payment of fine to be paid as compensation as ordered by the appellate court in Crl.A.No.142/2013. In the circumstances, the learned magistrate is directed to keep in abeyance the execution of the sentence for a period of three months from today. In case of failure on the part of the petitioner to pay the amount of compensation as ordered by the appellate court within the above 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.

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