

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

Crl.Rev.Pet.No. 19 of 2015 ()

AGAINST JUDGMENT IN CRL.A. 406/2013 of ADDL.SESIONS COURT-I,
KOTTAYAM

AGAINST JUDGMENT IN ST 101/2012 of J.M.F.C.III, KANJIRAPPALLY

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

NAJEEB K.H.
S/O.HANEEFA, KOLLAMPARAMBIL, CHUNKAPPARA
PATHANAMTHITTA DISTRICT.

BY ADVS.SRI.SALIM V.S.
SRI.SHANAVAS.S
SRI.H.NUJUMUDEEN
SRI.P.V.JEEVESH

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

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1. THAJUDEEN (SEETHAKULAM SIRAJUDEEN RAWTHER THAJUDEEN)
S/O.SIRAJUDEEN RAWTHER, SEETHAKULAM VEEDU
KANJIRAPALLY P.O, KOTTAYAM DISTRICT, PIN-686 513
 2. STATE OF KERALA
REP.BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
12-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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Crl.R.P. No.19 OF 2015

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Dated this the 12th day of January, 2015

ORDER

This revision petition is filed against the concurrent conviction entered against the petitioner under section 138 of the Negotiable Instruments Act. The revision petitioner was the accused in S.T.No.101 of 2012 on the files of the Court of Judicial First Class Magistrate-III, Kanjirappally. The first respondent herein filed a complaint against the revision petitioner, which was registered and taken on file as S.T.No.101 of 2012, alleging commission of offence under section 138 of the N.I Act. His case was that the revision petitioner, in discharge of a legally enforceable debt, issued Ext.P4 cheque dated 27.7.2010 and the said cheque on presentation was dishonoured on the ground of insufficiency of funds in the account maintained by the accused/revision petitioner. Thereupon, statutory

notice was issued to the revision petitioner intimating him of the dishonour of the cheque and calling upon him to pay the amount due. It is the failure on the part of the revision petitioner to pay the amount within the statutorily prescribed period that constrained the first respondent to file the said complaint. On due process, the revision petitioner entered appearance before the trial court and particulars of the charge were read over and explained to him. The revision petitioner pleaded not guilty and claimed to be tried. To prove the charge against the revision petitioner, the complainant himself got examined as PW1 and got marked Exts.P1 to P9(a). After the closure of the evidence of the complainant, the revision petitioner was examined under section 313, Cr.P.C and he denied all the incriminating circumstances put to him. He himself got examined as DW1 and got marked Exts.D1 to D3. After a careful evaluation of the evidence on record, the trial court found that the complainant has succeeded in proving the offence under section 138 N.I Act against the revision petitioner and upon such finding, he was convicted under

section 138 N.I Act and sentenced to undergo imprisonment till the rising of court and he was also directed to pay an amount of ₹143456/- with 6% interest. The said amount of fine (in fact, compensation), on realisation, was directed to be paid to the complainant under section 357(3) Cr.P.C. In default of payment of the said amount, he was ordered to undergo simple imprisonment for six months. In the appeal filed by the revision petitioner herein as Crl.A.No.406 of 2013, the appellate court confirmed the conviction and set aside the substantive sentence and sentenced him to pay a fine of ₹173500/- and in default of payment of fine, to undergo simple imprisonment for a period of three months. The amount of fine, on realisation, was directed to be given to the complainant as compensation under section 357(1) Cr.P.C. It is in the said circumstances that this revision petition has been filed.

2. Evidently, after a careful consideration of the evidence on record, both oral and documentary, the courts below found that the

cheque in question was issued by the revision petitioner herein in discharge of a legally enforceable debt owing to the second respondent/complainant. The courts below also found that all the ingredients to attract the offence under section 138 of the N.I.Act were proved against the revision petitioner. It is the result of such consideration that ultimately culminated in the conviction of the revision petitioner. Upon such conviction, the trial court sentenced the revision petitioner as aforesaid.

3. There cannot be any doubt with respect to the position that an interference with a conviction entered concurrently by the courts below is called for only in a case where the courts below appreciated the evidence in an utterly perverse manner or when the findings and conclusions of the courts below are totally against the weight of evidence. Evidently, the conclusions and findings arrived at by the trial court was found in tune with the evidence on record and it was in such circumstances that the appellate court confirmed the conviction.

I do not find any infirmity or illegality in the findings of the courts below and as such, no interference is called for, with the conviction of the revision petitioner. Evidently, the trial court upon finding the petitioner guilty under section 138 of the N.I Act convicted him as aforesaid. Though the operative portion of the judgment is capable of creating a confusion whether an amount of ₹1,43,456 with 6% interest from 29.4.2010 to 31.10.2013 was ordered to be paid as compensation or fine I do think it necessary to go into that question in detail, as virtually, it was set right by the appellate court. The appellate court set aside the sentence to undergo imprisonment till the rising of the court. The appellate court sentenced the revision petitioner to pay a fine of ₹1,73,500/- and in default of payment of fine, the revision petitioner was ordered to undergo simple imprisonment for a period of three months. The amount of fine, if realised, was directed to be given to the complainant as compensation under section 357(1) Cr.P.C. The revision petitioner was granted time till 31.12.2014 to deposit the amount of fine. In view of the discussions as above I do

not find any reason to interfere with the concurrent finding of conviction entered against the revision petitioner. The judgment of the appellate court would reveal that taking into account the evidence as also the other circumstances the appellate court modified the sentence. It is to be noted that as per the impugned judgment, the only sentence imposed on the revision petitioner for the conviction under section 138 N.I.Act is only to pay an amount of ₹173500/-. Ext.P1 cheque is dated 27.7.2010 and the cheque amount is ₹143456/-. Taking into account the said circumstances I do not find any reason to interfere with the sentence imposed on the revision petitioner. Accordingly, it is also confirmed. When this court was about to dismiss this matter without any qualification, the learned counsel appearing for the revision petitioner submitted that some reasonable time may be granted to the revision petitioner for effecting payment of fine as ordered by the appellate court. In such circumstances, while dismissing this revision petition, the revision petitioner is directed to effect payment of the amount of fine in the following manner. He

shall deposit ₹.70000/- before the trial court on or before 5.2.2015. In case the petitioner effects such payment, the balance amount due under the order passed by the appellate court shall be paid in four equal monthly instalments payable on or before the 5th of succeeding months. It is made clear that in case of failure on the part of the petitioner to pay the amounts, as aforesaid, appropriate steps shall be taken, in accordance with law, by the trial court to execute the sentence.

Sd/-

**C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

