

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

Crl.Rev.Pet.No. 20 of 2015 ()

**AGAINST THE JUDGMENT IN CRA 294/2008 OF ADDITIONAL SESSIONS COURT - III,
THALASSERY DATED 29-09-2014**

**AGAINST THE JUDGMENT IN ST 677/2006 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT, KUTHUPARAMBA DATED 30-06-2008**

REVISION PETITIONER/APPELLANT/ACCUSED:

**K.SATHEESAN
S/O.BALAKRISHNAN, SUDHALAYAM, MOORIYADU POST
KUTHUPARAMBA, KANNUR DISTRICT.**

BY ADV. SRI.UNNI. K.K. (EZHUMATTOOR)

RESPONDENTS/RESPONDENT//COMPLAINANT:

**1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

**2. P. PRAMOD
NEETHU NIVAS, PARAPPURAM, PINARAYI POST
KANNUR DISTRICT 670 761.**

R1 BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
08-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

shg/

K.RAMAKRISHNAN, J

Crl.R.P.No.20 OF 2015

Dated this the 8th day of January, 2015

O R D E R

Accused in ST.No.677/2006 on the file of the Judicial First Class Magistrate Court, Kuthuparamba is the revision petitioner herein.

2. The case was taken on file on the basis of a private complaint filed by the complainant - second respondent against the revision petitioner alleging offence under section 138 of the Negotiable Instruments Act (herein after called the Act).

3. The case of the complainant in the complaint was that the revision petitioner borrowed a sum of Rs.75,000/- and in discharge of that liability, he issued Ext.P1 cheque, which when presented was dishonoured for the reason funds insufficient evidenced by Ext.P2 dishonour memo. The complainant issued Ext.P3 notice vide Ext.P4 postal receipt and the same was received by the revision petitioner evidenced by Ext.P5 postal acknowledgment. The revision petitioner had not paid the amount. So, he had committed the offence punishable under section 138 of the Act. Hence the complaint.

4. When the revision petitioner appeared before the court below, the particulars of offence were read over and explained to him and he pleaded not guilty. In order to prove the case of the complainant, the complainant himself was examined as PW1 and Exts.P1 to P6 were marked on his side. After closure of the complainant's evidence, the revision petitioner was questioned under section 313 of the Code of Criminal Procedure (herein after called the Code) and he denied all the incriminating circumstances brought against him in the complainant's evidence. He had further stated that he had not issued any cheque and there is no transaction between the complainant and the revision petitioner. But no evidence was adduced on his side to prove his case. After considering the evidence on record, the court below found the revision petitioner guilty under section 138 of the Act and convicted him thereunder and sentenced him to undergo simple imprisonment for three months and also to pay the fine of Rs.75,000/- in default to undergo simple imprisonment for six months more. It is further ordered that if the fine amount is realised, the same be paid to the complainant as compensation under section 357 (1) (b) of the Code of Criminal Procedure. Aggrieved by the same, the revision petitioner filed Crl.Appeal No.294/2008 before the Sessions Court, Thalassery, which was made over to

III-Additional Sessions Court Thalassery for disposal and the learned Additional Sessions Judge by the impugned judgment allowed the appeal in part confirming the order of conviction but modified the sentence to undergo imprisonment till rising of court and converted the fine to compensation and reduced the default sentence to two months under section 357(3) of the Code of Criminal Procedure. Aggrieved by the same, the present revision has been filed by the revision petitioner- accused before the court below.

5. When the revision came up for hearing, the counsel for the revision petitioner wanted only time. So, this court felt that the revision can be disposed of at the admission stage itself after hearing the counsel for the revision petitioner and the Public Prosecutor dispensing with notice to the second respondent.

6. Having gone through the discussions in the judgments of the courts below, this court felt that the courts below have properly appreciated the evidence and rightly came to the conclusion that the cheque was issued by the revision petitioner in discharge of his liability and in spite of notice issued, he did not pay the amount and perfectly justified in convicting the revision petitioner for the offence under section 138 of the Act and the concurrent findings of the courts below

on this aspect do not call for any interference.

7. As regards the sentence is concerned, the trial court had sentenced him to undergo simple imprisonment for three months and also to pay a fine of Rs.75,000/- in default to undergo simple imprisonment for six months. It is further ordered that if the fine amount is realised, the same be paid to the complainant as compensation under section 357(1) (b) of the Code of Criminal Procedure. The appellate court had reduced the substantive sentence to imprisonment till rising of court, converted the fine to compensation and reduced the default sentence to two months under section 357(3) of the Code of Criminal Procedure.

8. As regards the substantive sentence is concerned it cannot be said that it is excessive as maximum leniency has been shown. As regards the compensation is concerned, in the decision reported in **Somnath Sarkar Vs Utpal Bahu Mallick [2013(4) KLT 350]**, the Supreme Court has held that under the Negotiable Instruments Act for the offence under section 138 of the Act, there is no provision for payment of compensation. But the court has got power to impose double the cheque amount as fine and if the fine amount is quantified, compensation to be awarded out of the fine amount. So, direction to pay compensation appears to be not correct and

this court feels that that amount of Rs.75,000/- can be converted to fine as done by the court below and retaining the default sentence as reduced by the appellate court, the entire fine amount if realised can be directed to be paid to the complainant as compensation under section 357(1) (b) of the Code of Criminal Procedure and that will meet the ends of justice. So the sentence is modified as follows:-

The revision petitioner is directed to undergo imprisonment till rising of court and to pay a fine of Rs.75,000/- in default to undergo simple imprisonment for two months. If the fine amount is realised, the same be paid to the complainant as compensation under section 357 (1) (b) of the Code of the Criminal Procedure. The counsel for the revision petitioner prayed six months time to pay the amount. Considering the amount and also considering the fact that the case is of the year 2006, this court felt that the time sought for appears to be excessive and granting four months time will be sufficient. So, the revision petitioner is granted time till 08.05.2015 to pay the amount. Till then the execution of the sentence is directed to be kept in abeyance.

With the above conversion of the compensation to fine and direction to pay the fine as compensation to the complainant and granting time alone, the revision petition is

disposed of accordingly. Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.RAMAKRISHNAN, JUDGE

R.AV

//True copy//

PA to Judge