

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. 31 of 2015 ()

AGAINST THE JUDGMENT IN CRL.A 407/2013 of ADDL.SESIONS COURT,
KOTTAYAM DATED 30-09-2014

AGAINST THE JUDGMENT IN ST 102/2012 of J.M.F.C.III, KANJIRAPPALLY
DATED 31-10-2013

REVISION PETITIONER/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

RESPONDENTS/RESPONDENTS/COMPLAINANT/STATE:

1. THAJUDHEEN
(SEETHAKULAM SIRAJUDEEN RAWTHER THAJUDEEN)
S/O.SIRAJUDEEN RAWTHER, SEETHAMKULAM VEEDU,
KANJIRAPALLY, KOTTAYAM DISTRICT, PIN: 686 513.

2. STATE OF KERALA,
REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM, PIN: 682 031.

R2 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:

K. RAMAKRISHNAN, J.

.....
Crl.R.P.No.31 of 2015
.....

Dated this the 8th day of January, 2015.

O R D E R

The accused in S.T.No.102/2012 on the file of the Judicial First Class Magistrate Court-III, Kanjirappally is the revision petitioner herein. The case was taken on file on the basis of a private complaint filed by the first respondent/complainant against the revision petitioner alleging the offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the Act).

2. The case of the complainant was that the revision petitioner borrowed several amounts through his father as instructed by him from abroad as agreed between them while they were in abroad and in partial discharge of that liability, the revision petitioner had issued Ext.P4 cheque, which when presented was dishonoured for the reason funds insufficient vide Ext.P5 dishonour memo. The complainant issued Ext.P9 notice vide Ext.P6 and Ext.P6(a) in the local address as well as in the foreign address and they were returned with endorsement unclaimed vide Exts.P7 and P8 returned notices.

The revision petitioner had not paid the amount. So he had committed the offence under Section 138 of the Act and hence the complaint.

3. When the revision petitioner appeared before the court below, particulars of offence were read over and explained to him and he pleaded not guilty. In order to prove the case of the complainant, Pws 1 and 2 were examined and Exts.P1 to P10 and Exts.P6(a) and P10 (a) 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 (hereinafter referred to as 'the Code' for short) and he denied all the incriminating circumstances brought against him in the complainant's evidence. He had further stated that he had no transaction with the complainant and there was some property transaction between him and PW2 and misusing the cheque which was given as security for the transaction, the present complaint has been filed and he had not received the notice. In order to prove his case, the revision petitioner himself was questioned as DW1 and Exts.D1 to Ext.D3 and Ext. D1 series were marked on his side. After considering the evidence, the court below found the revision petitioner guilty

under Section 138 of the Act and convicted him thereunder and sentenced him to undergo imprisonment till the rising of court and also to pay an amount of Rs.24,100/- with 6% interest from 29.4.2010 till 31.10.2013, in default to undergo simple imprisonment for six months. It is further ordered that if fine amount is realized, the same be paid to PW1 as compensation under Section 357(1)(b) of the Code (wrongly shown as section 357(3) of the Code). Aggrieved by the same, the revision petitioner filed Crl.A.No.407/2013 before the Sessions Court, Kottayam, which was made over to First Additional Sessions Court, Kottayam for disposal and the learned First Additional Sessions Judge allowed the appeal in part confirming the order of conviction and substantive sentence of imprisonment till the rising of court but quantified the fine as Rs.29,100/-, with default sentence of one month imprisonment and directed to pay fine amount, if realized, to the complainant as compensation under section 357(1)(b) of the Code. Aggrieved by the same, the present revision has been filed.

4. When the revision came up for hearing, the counsel for the revision petitioner submitted that he wants only time to pay

the amount.

5. Heard the counsel for the revision petitioner and the learned Public Prosecutor and the revision is disposed of at the admission stage itself dispensing with notice to the first respondent.

6. On going through the judgments of the courts below and the discussions therein, this Court is convinced that on the basis of the evidence, the courts below were perfectly justified in coming to the conclusion that the disputed cheque was issued in partial discharge of the legally enforceable debt due from him to the complainant and the notice issued was proper, as notice was issued not only in the local address but also in the foreign address and both the notices were returned unclaimed and thereby he had committed the offence punishable under section 138 of the Act.

7. As regards the sentence is concerned, the substantive sentence was given only till the rising of court and fine was quantified as Rs.29,100/- by the appellate court though the trial court had quantified the fine as Rs.24,100/- with interest @ 6% from 29.4.2010 till 30.10.2013 and that was directed to be paid to the complainant as compensation under section

357(1)(b) of the Code. The sentence cannot be said to be excessive.

8. However, considering the amount involved, one month time prayed by the counsel for the revision petitioner for payment appears to be reasonable. So the revision petitioner is granted time till 8.2.2015 to pay the amount. Till then, execution of the sentence is directed to be kept in abeyance.

With the above directions and observations, the revision petition is dismissed.

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

Sd/-

K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

