

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

Crl.Rev.Pet.No. 395 of 2013 ()

AGAINST THE ORDER/JUDGMENT IN CRA 164/2012 of ADDL.DISTRICT COURT
(ADHOC), KOZHIKODE DATED 11-12-2012

AGAINST THE ORDER/JUDGMENT IN CC 824/2009 of J.M.F.C.-V,KOZHIKODE
DATED 09-02-2012

REVISION PETITIONER/APPELLANT/ACCUSED:

K.ALAVI, AGED 59 YEARS
S/O.MUHAMMAD, KOYNAYIL HOUSE, VAZHAYOOR
KOTTUPADAM, MALAPPURAM.

BY ADVS.SRI.V.T.RAGHUNATH
SMT.C.V.RAJALAKSHMI

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE :

1. FATHIMA.P.P., AGED 48 YEARS
W/O.MUHAMMAD, DHARUSSALAM, PUTHUKODE
MALAPPURAM-673633.

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA-682031.

R1 BY ADV. SRI.P.S.SREEDHARAN PILLAI
R1 BY ADV. SRI.ARJUN SREEDHAR
R1 BY ADV. SR. T.K. SANDEEP
R1 BY ADV. SRI.ARUN KRISHNA DHAN
R2 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
03-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.R.P.No.395 of 2013

Dated 3rd March, 2015

ORDER

This revision petition is filed against the conviction concurrently entered against the revision petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act. The first respondent/complainant filed a complaint which was later taken on file and registered as C.C.No.824 of 2009 on the files of the Court of Judicial First Class Magistrate-V, Kozhikode alleging that the revision petitioner borrowed an amount of ₹ 1,70,000/- from her and issued Ext.P1 cheque in discharge of the said legally enforceable debt. Further it was alleged that on presentation for encashment the said cheque was dishonoured due to insufficiency of fund in the account maintained by the revision petitioner and thereupon, she issued statutory notice intimating the revision petitioner of the dishonour of the cheque and calling upon him to pay the amount due, within the statutorily prescribed period. But, the revision petitioner did not pay the same and it is the failure on the part of the revision petitioner to effect payment within the statutorily prescribed period that constrained the complainant to file the said complaint. Evidently,

after appreciating the evidence adduced by the first respondent to bring home the charge against the revision petitioner viz., her own oral testimony as PW1 and Exts.P1 to P7 and considering the oral testimony of the revision petitioner's son Sri.Muhammed Riyas as DW1 the trial court entered into the finding that the first respondent has succeeded in establishing the commission of offence under Section 138 of N.I. Act conclusively by the revision petitioner. Accordingly, the revision petitioner was found guilty and convicted under Section 138 of N.I. Act and for the conviction thereunder the revision petitioner was sentenced to undergo simple imprisonment for a period of three months and he was also directed to pay an amount of ₹ 2,08,250/- to the complainant as compensation under Section 357(3) Cr.P.C. In default of payment of the said amount of compensation he was directed to undergo simple imprisonment for a further period of three months. The revision petitioner filed Crl.A.No.164 of 2012 challenging the conviction and sentence imposed as per the said judgment. The appellate court on re-appreciation of the entire evidence found no merit in the contentions raised by the revision petitioner and declined to exercise the appellate jurisdiction in regard to the conviction entered against him and accordingly, confirmed the conviction of the revision petitioner under Section 138 of N.I. Act. Presumably, taking note of the settled position of law that in respect of a case of dishonour of cheque pecuniary aspect

has to be given priority over the punitive aspect the appellate court interfered and set aside the substantive sentence. But, at the same time, the direction to pay ₹ 2,08,250/- as compensation under Section 357(3) Cr.P.C. was modified and the revision petitioner was sentenced to pay a fine of ₹ 2,21,000/-. The default clause was maintained. The amount of fine on realisation was directed to be paid to the 1st respondent as compensation. It is in the said circumstances that the captioned revision petition has been filed challenging the said judgment in Crl.A.No.164 of 2012.

2. I have heard the learned counsel for the revision petitioner, the learned counsel appearing for the first respondent and also the learned Public Prosecutor.

3. On going through the judgments of the trial court as also the appellate court I do not find any reason to hold that the appreciation of evidence by the courts below is utterly perverse or against the weight of evidence or infected with any error in law warranting an interference invoking the revisional jurisdiction. The revision petitioner has failed to bring any such ground to compel this Court to invoke the revisional jurisdiction to interfere with the conviction concurrently entered against the revision petitioner. In the said circumstances, the conviction entered

against the revision petitioner by the courts below calls for no interference and as such it is confirmed. Now, the question is whether any interference is warranted with the modified sentence imposed by the appellate court. For the conviction under Section 138 of N.I. Act the trial court sentenced the petitioner to undergo simple imprisonment for three months and to pay an amount of ₹ 2,08,250/- to the complainant as compensation under Section 357(3) Cr.P.C. In default of payment of the said amount of compensation he was directed to undergo simple imprisonment for three months. As noticed hereinbefore, The appellate court interfered with the sentence imposed by the trial court for the conviction under Section 138 of N.I. Act and modified the same. Evidently, the substantive sentence to undergo imprisonment was set aside by the appellate court. The appellate court sentenced the revision petitioner to pay a sum of ₹ 2,21,000/- as fine and further ordered that the said amount, if realised, should be paid as compensation to the complainant. The default clause was maintained. There can be no doubt that a conviction must be followed by a sentence. In such circumstances, in this case while setting aside the substantive sentence of imprisonment for three months the revision petitioner was sentenced to pay a fine of ₹ 2,21,000/-. Ext.P1 cheque is dated 6.7.2009 and the cheque amount is ₹ 1,70,000/-. The trial court passed the judgment on 9.2.2012 and the appellate court passed the judgment on 11.12.2012. Considering all

such aspects I do not find any reason whatsoever to interfere with the modified sentence passed by the appellate court and hence, it is also liable to be confirmed. In the said circumstances, the sentence imposed against the revision petitioner is also confirmed. As ordered by the appellate court the amount of fine, on realisation, shall be paid to the first respondent as compensation under Section 357(1) Cr.P.C. When this Court was about to dismiss the matter without any qualification the learned counsel for the revision petitioner submitted that some reasonable time may be granted to the revision petitioner to effect payment of the amount of fine. Taking note of the said submission and also taking note of the amount of fine I am inclined to direct the learned Magistrate to keep in abeyance execution of the sentence for a period of six months to enable the revision petitioner to pay the same within the above stipulated time. Ordered accordingly. In case of failure on the part of the revision petitioner to pay the amount of fine 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

TKS