

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

Crl.Rev.Pet.No. 52 of 2015 ()

AGAINST THE JUDGMENT IN CrI.A 313/2013 of COURT OF ADDL. SESSIONS
JUDGE - IV, KOTTAYAM
AGAINST THE JUDGMENT IN ST 1804/2011 of J.M.F.C.-I,PALA

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

JOSHY GEORGE
VAYALIL HOUSE, PUTHUSSERRY, KALATHUKADAVU
ERATTUPETTA, KOTTAYAM.

BY ADV. SRI.M.J.THOMAS

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:

1. DOIL JOSE
C/O. KERALA KAUMUDI, MUNICIPAL COMPLEX BUILDING, PALA
KOTTAYAM.

2. THE STATE OF KERALA
RERPESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERANKULAM 682031.

R2 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
10-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

=====

CrI.R.P. No.52 OF 2015

=====

Dated this the 10th day of February, 2015

ORDER

This revision petition is filed against the concurrent conviction entered against the petitioner under section 138 of the Negotiable Instruments Act and the consequential imposition of the sentence for the said offence. The revision petitioner was the accused in S.T.No.1804 of 2011 of the Court of Judicial First Class Magistrate-I, Pala. The first respondent herein filed a complaint against the revision petitioner which was registered and taken on file as S.T.No.1804 of 2011 alleging commission of offence under section 138 of the NI Act. His case was that the revision petitioner borrowed an amount of ₹50,000/- from him and in discharge of the said legally enforceable debt, issued Ext.P1cheque dated 14.5.2011. 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 about the dishonour of the cheque and calling upon him to pay the amount due. Despite the receipt of statutory notice, the amount was not paid within the statutorily prescribed period. It was with such allegations that the first respondent filed the complaint which ultimately culminated in the impugned judgment. 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. To prove the charge against the revision petitioner, the complainant himself got examined as PW1 and got marked Exts.P1 to P5. 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. The revision petitioner examined one Sunny and Ammini as DW1 and DW2. However, no documentary evidence was adduced. After careful evaluation of the

evidence, the trial court found that the complainant has succeeded in proving the offence under section 138 NI Act against the revision petitioner and upon such finding, he was convicted under section 138 NI Act and sentenced to undergo simple imprisonment for three months. He was also ordered to pay a compensation of ₹50,000/- to the complainant under section 357(3) Cr.P.C. and in default of payment of compensation, to undergo simple imprisonment for a further period of three months. The petitioner filed Crl.Appeal No. 313 of 2013 and the Court of Additional Sessions Judge, Kottayam considered the manifold contentions raised by the revision petitioner to mount challenge against the order of the trial court and found them as meritless. The appellate court found that the evidence of DW1 and DW2 was not sufficient to dislodge the presumption available to the first respondent statutorily and in such circumstances, the evidence of PW1 with Exts.P1 to P5 would go to show that the revision petitioner has borrowed the amount and in discharge of the said legally

enforceable liability, issued Ext.P1 cheque and it was dishonoured on a ground referable to section 138 N.I Act. In that view of the matter, the appellate court found no illegality or infirmity in the judgment of the trial court and accordingly, confirmed the conviction. At the same time, the appellate court relied on the decision of the Hon'ble Apex Court in **Damodar S. Prabhu v. Sayed Babalal [2010 (2) KLT 587 SC]** wherein it was held that in respect of an offence of dishonour of cheques it is the compensatory aspect of the remedy which should be given priority over the punitive aspect. Based on such consideration, it was found that the substantive sentence of imprisonment awarded to the revision petitioner requires appellate interference. Accordingly, the substantive sentence was modified to imprisonment till the rising of court. At the same time, the appellate court maintained the direction to pay compensation of ₹50,000/- to the complainant under section 357 (3) Cr.P.C. and also default clause. This revision petition is filed against the said judgment.

2. I have heard the learned counsel for the petitioner and also the learned Public Prosecutor. The contention of the revision petitioner is that the evidence of DW1 and DW2 would go to show that the revision petitioner was conducting a partnership business with the complainant. A bank account was opened for him by PW1 and on opening the account, he obtained blank cheques issued from the bank to the revision petitioner. After careful evaluation of the evidence of DW1 and DW2, the trial court as also the appellate court found that DW1 and DW2 are the employees of the revision petitioner and in the absence of any documentary evidence to show the existence of partnership between the revision petitioner and the first respondent their version could not be believed and at any rate, their oral testimonies could not dislodge the benefit available to the revision petitioner under sections 118 and 139, N.I.Act as he has proved the execution of the cheque in question by the revision petitioner. The

revision petitioner did not have a case that the courts below have incorrectly adverted the evidence. In such circumstances, having considered the said contentions raised by the revision petitioner and perusing the judgments of the court below, I am of the view that the conclusions and findings of the courts below based on the evidence on record cannot be said to be an outcome of utter, perverse appreciation of evidence or against the weight of evidence. No error in law was also brought out by the revision petitioner. In such circumstances, I do not find any reason to interfere with the conviction concurrently entered against the revision petitioner for the offence under section 138 of the N.I.Act. Consequently, it is confirmed. Now, I will consider whether the revision petitioner has made out any ground for interfering with the modified sentence imposed by the appellate court for the conviction entered against him. The trial court sentenced the revision petitioner as aforesaid and as noticed hereinbefore, while maintaining the direction to pay the compensation and also the default

clause, the appellate court interfered with the sentence of imprisonment and modified it as imprisonment till the rising of court. The amount directed to be paid as compensation under section 357 (3) Cr.P.C is only the amount covered by the cheque in question. The cheque in question is dated 14.5.2011. In such circumstances, I find no reason to interfere with the sentence imposed against the revision petitioner as well for the conviction for the offence under section 138, N.I.Act. Consequently, it is also confirmed. When this court was about to dismiss the revision petition without any qualification, the learned counsel for the revision petitioner submitted that some reasonable time may be granted to the revision petitioner to pay the amount of compensation. Considering the said submission, I think it only appropriate to issue a direction to the learned Magistrate. Consequently, the learned Magistrate is directed to keep in abeyance all steps for realisation of the amount of compensation from the revision petitioner and also to execute the sentence of imprisonment

for a period of five months to enable the revision petitioner to pay the amount directed to be paid as compensation and to appear before the trial court to suffer the sentence, within the time stipulated. It is made clear that if any amount has already been deposited by the revision petitioner towards compensation, it shall be given credit. Needless to say that in case of failure on the part of the revision petitioner to deposit the amount of compensation and to appear before the trial court to suffer the sentence of imprisonment within the above stipulated time, the trial court shall take appropriate steps in accordance with law, forthwith.

Subject to the above, this revision petition is dismissed.

Sd/-
C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010