

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

Crl.Rev.Pet.No. 60 of 2015 ()

AGAINST THE JUDGMENT IN CRA 635/2009 of ADDITIONAL SESSIONS COURT -
V, THIRUVANANTHAPURAM DATED 28-05-2014

AGAINST THE JUDGMENT IN ST 988/2006 of JUDICIAL FIRST CLASS MAGISTRATE
COURT-VII, TRIVANDRUM DATED 19-08-2009

REVISION PETITIONER(S)/APPELLANTS/ACCUSED:-:

1. M/W.COMPUTER BOOK HOUSE REP. BY THOMAS CHACKO,
SOLE PROPRIETOR, COMPUTER BOOK HOUSE
PUTHENPURAKKAL VEEDU, RAJAKKANDAMKARA
ANAKKARA VILLAGE, VANDENMEDU PANCHAYATH
UDUMBANCHOLA TALUK, IDUKKI DISTRICT.
2. THOMAS CHACKO, AGED 45 YEARS
S/O.LATE CHACKO, SOLE PROPRIETOR, COMPUTER BOOK HOUSE
PUTHENPURAKKAL VEEDU, RAJAKKANDAMKARA
ANAKKARA VILLAGE, VANDENMEDU PANCHAYATH
UDUMBANCHOLA TALUK, IDUKKI DISTRICT

BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM
SMT.K.R.MONISHA
SRI.BOBY C. BABY
SRI.ANOOP BHASKAR
SMT.T.U.ANUKRISHNA

RESPONDENT(S)/RESPONDENS/STATE AND COMPLAINANT:-:

1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
2. K.SADASIVAN, AYEYESAREKUZHIYILMUKKU, MARKET ROAD,
THOTTAVARAM, ATTINGAL, THIRUVANANTHAPURAM - 695 101.

R2 BY ADV. SRI.RAM MOHAN.G.
SRI.G.P.SHINOD
SRI.MANU V.
SRI.GOVIND PADMANABHAN
SRI.AJIT G.ANJARLEKAR

R1 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 17-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J

Crl.R.P. No. 60 of 2015

Dated this the 17th day of March, 2015

ORDER

The revisionist is convicted under section 138 of the Negotiable Instruments Act. A composite sentence of imprisonment and fine was imposed on the petitioner in S.T.No.988/2006 by the Court of the Judicial First Class Magistrate-VII, Thiruvananthapuram. The petitioner preferred an appeal as Crl.A.No.635/2009. Evidently, for the conviction under section 138 of the N.I.Act the trial court sentenced the petitioner to undergo simple imprisonment for a period of two months and to pay fine of ₹3,00,000/-. The amount of fine on realisation was ordered to be paid to the complainant under section 357(1) of the Code of Criminal Procedure. In default of payment of fine the accused was directed to undergo a further period of imprisonment for 20 days. The appellate court upon confirming the conviction under section 138 of the N.I.Act found that the sentence imposed therefor by the trial court, as aforesaid, is

nothing but a condign punishment for the offence under section 138 of the N.I.Act and accordingly the sentence imposed on the petitioner for the conviction under section 138 of the N.I.Act was also confirmed. The learned counsel for the petitioner submitted that the imposition of substantive sentence as aforesaid besides imposing the sentence to pay a fine of ₹3,00,000/ which is equal to the amount covered by the cheque is not in tune with the decisions of the Hon'ble Apex Court in the matter of dishonour of cheques. In otherwords, the learned counsel for the petitioner very fairly submitted that in view of the evidence on record the conviction entered conclusively against revision petitioner cannot be said to be illegal and at the same time, the sentence imposed therefor, requires interference.

2. I have heard the learned counsel for the revision petitioner on the said aspect.

3. In the contextual situation it is relevant to refer to the decision of the Hon'ble Apex Court in **Damodar S. Prabhu v. Sayed Babalal H** reported in AIR 2010 SC 1907 and **Kaushalya Devi Massand v. Roopkishore** reported AIR 2011

SC 2566. In the said decision the Hon'ble Apex Court held that the offences under section 138 of the N.I.Act are basically of civil nature, but criminal colour has been given by incorporating the same in the Negotiable Instruments Act. It was also held that the intention of the legislature in enacting the provision under section 138 is to make the drawer of the cheque to pay the amount of fine, by giving an opportunity and not to sent him to jail. In the light of the decisions referred (supra) I am of the view that the sentence imposed for the conviction to under section 138 of the N.I.Act by the courts below invites interference while confirming the conviction. In the said circumstances, the sentence imposed for the conviction for the offence under section 138 by the trial court which was affirmed by the appellate court is set aside. Consequently, while confirming the conviction for the offence under section 138 of the N.I.Act the petitioner is sentenced to undergo imprisonment till the rising of the court and the sentence of payment of fine imposed for the conviction thereunder and also the default clause are maintained. The revision petitioner is granted six months time to pay the amount

of fine of ₹3,00,000/- which is to be paid to the complainant as compensation under section 357(1) of the Cr.P.C. In the said circumstances, the learned magistrate is directed to keep in abeyance the execution of the sentence for a period of six months to enable the petitioner to effect deposit of the amount of fine within the aforesaid period and to appear before the court to undergo sentence of imprisonment till the rising of the court, within the above stipulated time. In case of failure on the part of the petitioner to pay the amount of fine and to appear before the court to undergo imprisonment till the rising of the court, within the above stipulate time the learned magistrate shall take appropriate steps for executing the sentence, in accordance with law, expeditiously.

The revision petition is thus allowed in part, as above.

Sd/-

C.T.RAVIKUMAR,JUDGE.

dlk