

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

Crl.Rev.Pet.No. 65 of 2015 ()

AGAINST THE JUDGMENT IN CRA 400/2011 of COURT OF ADDL. SESSIONS
JUDGE - IV, KOLLAM

AGAINST THE JUDGMENT IN ST 138/2010 of J.M.F.C. - III, KOLLAM DATED
24.10.2011

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

P. GILBERT, AGED 38 YEARS, S/O.PIUS
PROPRIETOR LOUIS COMPANY, SUKRUTHAM
LEKSHMINADA KOLLAM-13.

BY ADV. SRI.SYAM J SAM

RESPONDENT(S)/COMPLAINANT/STATE:

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1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
 2. NELSON DCRUZ
SNEHALAYAM, SOUMYATHA NAGAR
PUNNATHALA SOUTH, THANGASSERI P.O., KOLLAM.

R2 BY ADV. SRI.K.SUBASH CHANDRA BOSE
R1 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
04-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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CRL.R.P. No.65 OF 2015

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Dated this the 4th day of March, 2015

ORDER

This revision petition is directed against the conviction and sentence concurrently entered against the revision petitioner under section 138 of the Negotiable Instruments Act. The allegation of the second respondent/complainant is that the petitioner borrowed an amount of ₹1,80,000/- from him and in discharge of the said legally enforceable debt, he issued Exts.P1 and P2 cheques. But, on presentation for encashment, the said cheques were dishonoured due to insufficiency of funds in the account of the revision petitioner. Thereupon, the complainant issued notice intimating the revision petitioner of the dishonour of the cheques and calling upon him to pay the amount due. 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 complaint which was taken on

file and numbered as S.T.No.138 of 2010 on the files of the Court of Judicial First Class Magistrate-III, Kollam. On due process, the revision petitioner appeared before the court and the particulars of the charge were read over and explained to him and he pleaded not guilty. The complainant got himself examined as PW1 and got marked Exts.P1 to P12 to bring home the charge against the revision petitioner. On the closure of the evidence of the complainant, the revision petitioner herein was examined under Section 313 Cr.P.C. and he denied all the incriminating circumstances put to him. However, no defence evidence was adduced. On a careful evaluation of the evidence, the trial court found that the complainant has succeeded in establishing the fact that the petitioner herein has committed the offence under Section 138 of the Negotiable Instruments Act. Consequently, he was convicted thereunder and sentenced to undergo simple imprisonment for a period of two months and to pay a compensation of ₹1,80,000/- under section 357 Cr.P.C and in default of payment of compensation to undergo simple imprisonment for a

further period of one month. The petitioner unsuccessfully attempted an appeal as Crl.A.No.400 of 2011 before the Court of IV Additional Sessions Judge, Kollam. Various contentions were raised against the judgment of the trial court. However, the learned IV Additional Sessions Judge found that the conclusions and findings of the trial court are perfectly in tune with the evidence on record. Accordingly, the conviction and sentence were confirmed by the appellate court. This revision petition has been filed in the said circumstances.

2. I have heard the learned counsel for the petitioner, the learned counsel for the second respondent and the learned Public Prosecutor. Virtually, the revision petitioner reiterated the contentions raised by him in the appeal. Obviously, the courts below, on appreciation of evidence on record, convicted the petitioner concurrently for the offence under section 138, NI Act. In such circumstances, in order to invite interference in exercise of the revisional jurisdiction, the petitioner has to make out a case of utter,

perverse appreciation of evidence by the courts below or that the conclusions and findings are totally against the weight of evidence. I have no hesitation to hold that the petitioner has failed to make out any such case warranting interference by this Court in exercise of the revisional jurisdiction. No error in law has also been brought out to my notice. In the result, conviction of the petitioner under section 138 NI Act is hereby confirmed.

3. Now, I will consider the question whether the sentence imposed on the revision petitioner for the conviction invites interference. In the light of the decisions of the Hon'ble Apex Court in **Damodar S.Prabhu v. Sayed Babalal H [AIR 2010 SC 1907]** and **Kaushalya Devi Massand v. Roopkishore [AIR 2011 SC 2566]** the pecuniary aspect has to be given priority over the punitive aspect in a case of dishonour of cheque. Evidently, the total amount covered by Exts.P1 and P2 cheques is ₹1,80,000/- and the said cheques are dated 27.02.2008. The Hon'ble Apex Court held that the offence under

section 138 NI Act is basically of civil nature and that the intention of the legislature in enacting the same 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 said circumstances and taking into account the submission made by the learned counsel for the revision petitioner that the revision petitioner would pay the amount of compensation in case some reasonable time is granted, I am of the view that the sentence imposed on the petitioner requires modification. In such circumstances, while confirming the conviction, the sentence imposed on the revision petitioner for the conviction under section 138, NI Act is modified and the substantive sentence to undergo simple imprisonment for two months is reduced to imprisonment till the rising of the court. However, the direction to pay compensation and default clause is maintained. The learned Magistrate is directed to keep in abeyance the execution of sentence as also initiation of steps to recover the amount of compensation, for a period of six months to enable the revision petitioner to pay the amount of compensation and

to appear before the trial court to suffer the sentence of imprisonment within the stipulated time. In case of failure on the part of the revision petitioner to pay the amount of compensation and to appear before the trial court to suffer the sentence of imprisonment till the rising of the court, within the stipulated time, the learned Magistrate shall take appropriate steps in accordance with law.

This revision petition is thus allowed in part and disposed of as above.

Sd/-

**C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

