

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

Crl.Rev.Pet.No. 70 of 2015 ()

AGAINST THE JUDGMENT IN CRA 551/2013 OF COURT OF II ADDL. SESSIONS
JUDGE, KOZHIKODE DATED 11.7.2014

AGAINST THE JUDGMENT IN CC 93/2013 (CC.NO.1264 OF 2012) OF COURT OF
JUDICIAL FIRST CLASS MAGISTRATE-II, VADAKARA DATED 5.11.2013

REVISION PETITIONER/APPELLANT/ACCUSED:

K.N.RAFEEQ, AGED 42 YEARS
S/O.ABDUL HAJI, KALLUNIRAVINMEL HOUSE
KAVILUMPARA P.O., KUTTIYADI VIA, VADAKARA TALUK
KOZHIKODE DISTRICT.

BY ADV. SRI.V.C.MADHAVANKUTTY

RESPONDENTS/RESPONDENTS/STATE & COMPLAINANT:

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1. STATE OF KERALA
REPRESENTED BY ITS PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
 2. ARJUN AMARAVATHI CHITS PVT. LTD., NO.30,
KUTCHERY ROAD, MYLAPORE, CHENNAI-4
REPRESENTED BY POWER OF ATTORNEY HOLDER AND
ASSIST. MANAGER OF VADAKARA BRANCH
K.LOHITHAKSHAN, AGED 65 YEARS,
S/O.NARAYANAKURUP, PODIKKANDY HOUSE
ONCHIYAM, P.O.CHOMBALA, VADAKARA- 673301.

R2 BY ADV. SRI.K.RAKESH ROSHAN
R2 BY ADV. SMT.THUSHARA.V
R1 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 20-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.R.P.No.70 of 2015

Dated 20th January, 2015

ORDER

This revision petition is filed by the accused in C.C.No.93 of 2013 on the files of the Court of Judicial First Class Magistrate-II, Vatakara who was tried, convicted and sentenced under Section 138 of the Negotiable Instruments Act (for short 'N.I. Act'). Crl. Appeal No.551 of 2013 filed against the said judgment was dismissed and the conviction and the sentence were confirmed. The case of the 2nd respondent/complainant was that the revision petitioner issued Ext.P1 cheque for ₹ 71,000/- in discharge of a legally enforceable debt and the same on its presentation for encashment was dishonoured on the ground 'account closed'. Thereupon, the complainant issued statutory notice within the prescribed time informing the revision petitioner about the dishonour of the cheque and calling upon him to pay the amount due. It is the failure on the part of the revision petitioner to pay the amount within the statutorily permissible period that constrained the complainant to file the complaint which was, later, taken on file and registered as C.C.No.93 of 2013. On due process the revision petitioner appeared before the trial court and the particulars of the offence were

read over and explained to him. He pleaded not guilty. Thereupon, the complainant adduced his evidence to bring home the charge against the revision petitioner. The Power of Attorney Holder of the complainant 'Arjun Amaravathi Chits Pvt. Ltd.' got himself examined as PW1 and Exts.P1 to P12 were got marked. Upon closure of the evidence of the complainant the revision petitioner was examined under Section 313 of the Code of Criminal Procedure Code and he denied all the incriminating circumstances put to him. The petitioner has not adduced any defence evidence. On evaluation of the evidence on record the learned Magistrate found that the complainant succeeded in proving that the accused has committed an offence under Section 138 of N.I.Act and consequently, convicted him thereunder and sentenced to undergo imprisonment till the rising of the court and to pay a fine of ₹ 71,000/-. The amount of fine on realisation was ordered to be paid to the complainant company under Section 357(1)(b), Cr.P.C. and in default of payment of fine the petitioner was directed to undergo simple imprisonment for two months. Aggrieved by the said judgment the revision petitioner filed Crl.A.No.551 of 2013. After considering the various contentions raised by the revision petitioner herein the appellate court found that the conviction entered into and the sentence imposed on, the revision petitioner/accused call for no appellate interference and the appeal dismissed the appeal as per the impugned judgment. This revision petition is filed in the said

circumstances.

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

3. The learned counsel for the revision petitioner submitted that the impugned judgment confirming the conviction entered into and the sentence imposed, against the petitioner is liable to be set aside on various grounds. Primarily, it is contended that it did not conform to the mandate under Section 263(h) of Cr.P.C. inasmuch as there is absolutely no finding against the petitioner regarding the commission of the offence under Section 138 of N.I. Act and in such circumstances, he could not have been convicted and sentenced for the offence under Section 138 of N.I. Act. As noticed hereinbefore, to substantiate the charge of commission of offence under Section 138 of N.I. Act by the petitioner the complainant examined its Power of Attorney Holder as PW1 and got marked Exts.P1 to P12. Ext.P1 is the cheque dated 17.3.2012 which was dishonoured on the ground 'account closed' and Ext.P2 is the memo dated 12.4.2012 revealing the same. Ext.P3 is the lawyer notice issued pursuant to the dishonour of the cheque to the revision petitioner. The courts below found that all the statutory mandates have been complied

with and in fact, this aspect was not at all disputed by the revision petitioner. PW1 is the Power of Attorney Holder of the complainant company and he deposed to the effect that the petitioner subscribed a chit conducted by the complainant company for a total amount of ₹ 2,00,000/- (Rupees Two lakhs only). He bid the chit and received the amount. The said chit was terminated on 25.6.2010 and as on that day the subscriber was liable to pay an amount of ₹ 98,660/-. Pursuant to the receipt of notice the petitioner herein along with his sureties came to the Senior Manager's Office of the company at Vatakara and promised to pay the entire amount to discharge the claim. As part payment the petitioner issued a cheque for ₹ 71,000/- and according to the 2nd respondent/complainant it is the said cheque which was dishonoured on its presentation. The contention of the revision petitioner is that the case was filed misusing his cheque which was handed over to the complainant-company at the time of bidding the chit. However, the revision petitioner did not adduce evidence to prove the said defence. At the same time, it is to be noted that the complainant has proved the original transaction, as well. Ext.P11 is the chit agreement and Exts.P8 to P12 are the account ledgers. The complainant proved that the petitioner was a subscriber of Chitty No.A82F 11/18 and it is to be noted that the petitioner has not disputed his signature in Ext.P1. True that

admission of signature in a cheque would not amount to admission of its execution. At the same time, in this case, evidently, the complainant company proved the original transaction, as well by adducing evidence. The case of the 2nd respondent company that it was for the part payment of the liability arising out of the aforesaid chitty transaction that the accused issued Ext.P1 cheque for ₹ 71,000/- and that the said cheque got dishonoured on the ground 'account closed' was proved through PW1 with Exts.P1 to P12. The account maintained by the petitioner was closed when the cheque was presented for encashment and no satisfactory and sustainable ground was established by the revision petitioner to justify the action in closing the account. The revision petitioner had not mounted the box and he had also not adduced any documentary evidence. No circumstances capable of drawing any inference regarding the existence of such a reason was also brought to my notice. The present contention based on Section 263(h) Cr.P.C. has been raised for the first time before this Court. The learned counsel contended that since it being a legal question the failure on the part of the petitioner to raise that question before the appellate court would not deprive him of the liberty to raise that question before this Court. As noticed hereinbefore, the contention of the petitioner is that a perusal of the judgment of the trial court would reveal that the learned Magistrate

had not entered into a definite finding regarding the guilt of the petitioner as required under the provisions of Section 263(h) Cr.P.C. for the purpose of convicting and sentencing him under Section 138 of N.I. Act and this fact was not at all looked into by the appellate court. True that, the provisions under Section 263(h) Cr.P.C. would reveal that in every case tried summarily, the Magistrate concerned shall enter, in such form as the State Government may direct, the particulars of the finding entered into among the other particulars. To know whether there is any basis for the contention of the petitioner that he was convicted and sentenced without entering into any such definite finding I have gone through the judgment of the trial court. Evidently, the learned Magistrate formulated the following points for consideration:-

- “1. Whether the accused has executed Ext.P1 cheque to the complainant for discharging legal debt or liability?
2. Whether the accused has committed any offence punishable under Section 138 of the Negotiable Instruments Act?
3. What is the sentence or order?”

The petitioner did not dispute the fact that he was a subscriber to the aforesaid chitty. At any rate, transaction of the chitty by the revision petitioner was established by the complainant. The petitioner did not

dispute his signature in the cheque and he did not mount the box to adduce any evidence. After analysing the evidence on record evidently, the learned Magistrate arrived at a clear finding to the effect that the complainant has succeeded to prove beyond reasonable doubt that the accused/revision petitioner committed the offence under Section 138 of N.I. Act. It was based on the said finding that the petitioner was convicted and sentenced as aforesaid. When that be the position discernible from the judgment of the trial court I am at a loss to understand what exactly is the basis for the contention that the learned Magistrate has failed to enter into a finding regarding the guilt of the revision petitioner for convicting and sentencing him for the offence under Section 138 of N.I. Act. Having gone through the judgment of the trial court I have no hesitation to hold that the learned Magistrate has considered the evidence on record and arrived at the finding that the complainant has proved beyond reasonable doubt that the accused has committed the offence under Section 138 of N.I. Act. It is after having arrived at the said conclusion that the petitioner was convicted under Section 138 of N.I. Act and sentenced therefor. As noticed hereinbefore, the appellate court could not be found fault with for non-consideration of the aforesaid issue raised by the petitioner as admittedly, that question was never raised before the appellate court. No illegality or impropriety has been brought out by the petitioner warranting interference in

exercise of the revisional power. In the circumstances as aforesaid, I do not find any reason to interfere with the conviction concurrently entered against the petitioner. Accordingly, the conviction of the revision petitioner for the offence under Section 138 of N.I. Act is confirmed.

4. The petitioner was sentenced only to undergo imprisonment till the rising of the court and to pay a fine of ₹ 71,000/- for the conviction under Section 138 of N.I. Act. Evidently, the amount of fine imposed is only the amount covered by the cheque and Ext.P1 cheque is dated 17.3.2012. Besides the said sentence the revision petitioner was sentenced only to undergo imprisonment till the rising of the court. Taking into account the said aspects I do not find any reason to interfere with the sentence imposed for the conviction on the revision petitioner. Accordingly, it is also confirmed. When this Court was about to dismiss this matter without any qualification, the learned counsel appearing for the petitioner submitted that the petitioner may be granted some reasonable time to pay the amount of fine. Having heard the learned counsel for the petitioner and also the learned counsel appearing for the 2nd respondent on the said submission the learned Magistrate is directed to keep in abeyance the execution for a period of six months to enable the petitioner to deposit the amount of fine and to appear before the trial court to suffer the sentence. In case of failure on the part of the

petitioner to deposit the amount of fine and to appear before the trial court to suffer the sentence within the above stipulated time the learned Magistrate shall take appropriate steps for executing the sentence, in accordance wit law, expeditiously.

Subject to the above this revision petition is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS