

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

Crl.Rev.Pet.No. 84 of 2015 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 601/2013 of ADDITIONAL
SESSIONS COURT - V, KOZHIKODE DATED 11-07-2014

AGAINST THE JUDGMENT IN S.T.NO. 1009/2011 of THE JUDICIAL FIRST CLASS
MAGISTRATE COURT-I,THAMARASSERY DATED 07-11-2013

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

K. RAMACHANDRAN MASTER
SON OF KELAN, KORATHUKANDY, KARAKUNNUMMAL HOUSE
P.O.IYYADU, KOZHIKODE 673 572.

BY ADV. SRI.JACOB ABRAHAM

RESPONDENT(S)/RESPONDENT/COMPLAINANT::

1. C.P. CHANTHU
SON OF LATE KANDAN, OTHAYOTHU HOUSE, P.O.KIZHAKKOTH
KODUVALLY, KOZHIKODE - 673 572.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM 682 031.

R2 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 23-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

dlk

C.T.RAVIKUMAR, J

Crl.R.P. No. 84 of 2015

Dated this the 23rd day of February, 2015

ORDER

This revision petition is directed against the conviction concurrently entered against the petitioner under section 138 of the Negotiable Instruments Act. The petitioner was tried for an offence under section 138 of the N.I.Act before the court of the Judicial First Class Magistrate-I, Thamarassery in S.T. No.1009/2011. After complying with all the procedures of trial for an offence under section 138 of the N.I.Act and on appreciation of the evidence adduced by the first respondent/complainant the Trial Court found the petitioner guilty thereunder and convicted him to undergo imprisonment till the rising of the court. He was directed to pay compensation of Rs.2,95,000/- to the complainant under section 357(3) of the Code of Criminal Procedure. In default of payment of compensation he was directed to undergo simple imprisonment for a period of one month. The petitioner unsuccessfully challenged the same in Crl.A.No.601/2013. The appellate court confirmed the conviction as also the sentence. This revision petition is filed in the aforesaid circumstances.

2. The case of the first respondent is that the appellant borrowed an amount of Rs.2,50,000/- and in discharge of the said legally enforceable debt issued Ext.P1 cheque for the same amount. The first respondent/complainant got himself examined as PW1 and got marked Exts.P1 to P7 to bring home the charge against the revision petitioner. Evidently, the petitioner took up the contention that the statutory notice was not properly served on him. Ext.P5 is the statutory notice issued by the first respondent. The said fact was elaborately considered by the Trial Court as can be seen from paragraphs 6 and 7 of the judgment of the Trial Court. Ext.P7 is the acknowledgment card which would reveal that Ext.P5 notice was received by an authorised person. The Court found that in respect of a registered postal article it could be delivered to the addressee and in the absence of the addressee it could also be delivered to an authorised person. Ext.P7 would reveal that it was received by an authorised person. In this context it is also to be noted that there is no case for the petitioner that his address was incorrectly shown in Ext.P5. It is after proper consideration that the trial court found that there is no merit in the contention that Ext.P5 notice was not served on him. That

contention was again taken by the petitioner before the appellate court. The Appellate Court considered the said aspect in paragraph 7 of the said judgment. Evidently, the appellate court after re-appreciating the evidence on record found that the said contention of the petitioner could not be accepted as Ext.P5 notice sent as per Ext.P6 was seen duly accepted as per Ext.P7 at the address to which it was sent. The revision petitioner did not have a case that the address shown in Ext.P5 is not his correct address. In such circumstances, the appellate court also found that when it is shown that Ext.P5 lawyer notice which was issued in the correct address was acknowledged, as can be seen from Ext.P7. The courts below concurrently found that the said contention raised by the petitioner merits no consideration and in fact, Ext.P5 notice was duly served on the petitioner. It is to be noted that the petitioner had not mounted the box and in fact, he has not adduced any evidence in defence. It was on appreciation of the evidence on record that the trial court as also the appellate court arrived at the conclusion that the oral evidence of PW1 with Exts.P1 to P7 are sufficient to establish the charge of commission of offence under section 138 of the N.I.Act against the revision petitioner. Having carefully

considered the judgment and upon hearing the learned counsel for the revision petitioner I do not find any reason to disagree with the findings of the courts below for entering conviction against the revision petitioner. In other words, no case was brought out by the petitioner to interfere with the conviction concurrently entered against him for the offence under section 138 of the N.I.Act.

3. Upon convicting the petitioner under section 138 of the N.I.Act the trial court sentenced him to undergo imprisonment till the rising of the court and he was directed to pay compensation of Rs.2,95,000/- to the complainant under section 357(3) Cr.P.C. The appellate court, evidently, considered the requirement, if any, to interfere with the sentence imposed by the trial court and ultimately found that no appellate interference is called for in the facts and circumstances. As noticed hereinbefore, the sentence imposed for the conviction under section 138 of the N.I.Act against the petitioner is only imprisonment till the rising of the court. The amount covered by the cheque is Rs.2,50,000/- and the amount directed to be paid as compensation under section 357 (3) Cr.P.C is only Rs.2,95,000/-. Ext.P1 cheque is dated 24.9.2011. In such circumstances, when once it is found that there is no scope

for interfering with the conviction in exercise of the revisional jurisdiction and when once it is found that the sentence imposed against the petitioner is only imprisonment till rising of the court I am of the considered view that a further interference with the sentence imposed as also with the direction to pay compensation call for no interference in exercise of the revisional jurisdiction. In short, I do not find any reason to interfere with the conviction as also the sentence imposed against the petitioner. The learned counsel for the petitioner in such circumstances submitted that the petitioner may be granted some reasonable time to effect payment of compensation. Taking note of the fact that the amount directed to be paid as compensation is Rs.2,95,000/- I am of the view that even while confirming the conviction as also the sentence it will only be appropriate, in the interest of justice, to direct the learned magistrate to keep in abeyance the execution of the sentence as also to take appropriate steps for realising the amount of compensation for a period of 8 months so as to enable the petitioner to pay the amount of compensation and to appear before the trial court to undergo imprisonment till the rising of the court in the meanwhile. Ordered accordingly. Needless to say that in case

the petitioner fails to pay the amount of compensation and to appear before the trial court to undergo the sentence of imprisonment till the rising of the court, within the above stipulated time appropriate steps shall be taken by the trial court in accordance with law.

Subject to the above this revision petition is dismissed.

Sd/-

C.T.RAVIKUMAR,JUDGE.

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