

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

Crl.Rev.Pet.No. 101 of 2015 ()

AGAINST THE JUDGMENT IN CRA 214/2012 OF THE COURT OF ADDITIONAL
SESSIONS JUDGE-III/ENQUIRY COMMISSIONER AND SPECIAL JUDGE
(VIGILANCE), KOTTAYAM DATED 02-06-2014

AGAINST THE JUDGMENT IN ST 78/2012 of COURT OF JUDICIAL FIRST CLASS
MAGISTRATE-V, KOTTAYAM DATED 15-06-2012

REVISION PETITIONER/APPELLANT/ACCUSED:

M.K.AJITH KUMAR, S/O.KRISHNANKUTTY NAIR, AGED 45 YEARS
KEGEES HOUSE, NEAR MATHANAM TEMPLE,
THALAYOLAPARAMBU P.O., KOTTAYAM DISTRICT.

BY ADV. SRI.SAKIR.K.H.

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

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1. P.S.RAJASEKHARAN, S/O.KRISHNANKUTTY, KADACKAL HOUSE,
KUMARAKOM SOUTH P.O., KOTTAYAM-686 583.
 2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SMT.M.MADHUBEN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 23-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.R.P.No.101 of 2015

Dated 23rd January, 2015

ORDER

This revision petition is directed against the judgment in Crl.Appeal No.214 of 2012 of the Court of Additional Sessions Judge-III/Enquiry Commissioner and Special Judge (Vigilance), Kottayam. As per the impugned judgment, the conviction of the revision petitioner in S.T.No.78 of 2012 of the Court of Judicial First Class Magistrate-V, Kottayam under section 138 of the Negotiable Instruments Act and the sentence imposed for such conviction, were confirmed. The trial court sentenced him to undergo simple imprisonment for a day till the rising of court and he was also directed to pay a compensation of ₹ 1,10,300/- under Section 357(3) of the Code of Criminal Procedure. In default to pay the amount of compensation the revision petitioner was also directed to undergo simple imprisonment for a period of four months. Virtually, it was also maintained by the appellate court. It is in the said circumstances that this revision petition has been filed.

2. Evidently, after a careful consideration of the evidence on record, both oral and documentary, the courts below found that the

cheque in question was issued by the petitioner herein in discharge of a legally enforceable debt owing to the first respondent/complainant. The courts below also found that all the ingredients to attract the offence under section 138 of the N.I.Act were proved against the revision petitioner. It is the result of such consideration that ultimately culminated in the conviction of the petitioner. Upon such conviction, the trial court sentenced the petitioner to undergo imprisonment till the rising of the court and to pay a compensation of ₹ 1,10,300/- under section 357(3) Cr.P.C. The appellate court found no ground to interfere with the conviction. In such cases of concurrent conviction in the absence of a case of utter perverse appreciation of evidence or any illegality in view of error of law an interference in exercise of revisional jurisdiction is uncalled for. No case has been brought out by the revision petitioner inviting such an interference. Accordingly, the conviction of the revision petitioner under section 138 of the N.I.Act concurrently entered into by the courts below calls for no interference and it is confirmed. Upon such conviction, the petitioner was sentenced to undergo imprisonment till the rising of court and it was followed by a direction to the revision petitioner to pay an amount of ₹ 1,10,300/- as compensation. The amount directed to be paid as compensation is the amount covered by Ext.P1 cheque and also a simple interest thereon at

the rate of 9% per annum from the date of the cheque. Evidently, no direction was given to pay compensation to the complainant for the amount covered by the cheque with interest from a particular date till the date of realisation. Obviously, for the purpose of arriving at the figure of ₹ 1,10,300/- the amount covered by the cheque and the simple interest at the rate of 9% was taken into account. Merely because such a conclusion was made no interference is called for taking into account the fact that the amount covered by the cheque is ₹ 1,00,000/- and the amount directed to be paid as compensation is ₹ 1,10,300/-. The amount of compensation was not interfered by the appellate court also. Taking into account such circumstances, I do not find any reason to interfere with the sentence as well. When this court was about to dismiss this matter without any qualification the learned counsel appearing for the petitioner submitted that some reasonable time may be granted to the petitioner for effecting payment of compensation. In such circumstances, the learned Magistrate is directed to keep in abeyance execution of the sentence for a period of five months so as to enable the petitioner to deposit the amount of compensation. In case of failure on the part of the petitioner to pay the amount within the above stipulated time, the learned Magistrate shall take appropriate steps, in accordance with law. In the meanwhile, the petitioner shall appear before the trial

court on 25.3.2015 to suffer the sentence of imprisonment till the rising of court.

Subject to the above, this revision petition is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS