

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. 108 of 2015 ()

AGAINST THE JUDGMENT IN CRA 230/2011 of III ADDL. SESSIONS JUDGE,
THRISSUR DATED 17-11-2014
AGAINST JUDGMENT IN CC 486/2009 of J.M.F.C., CHALAKUDY

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

SHIBY
S/O.KOCHAPPU, VALIYAPARAMBIL HOUSE, MELOOR P.O.
PUSHPAGIRI DESOM, MUKUNDAPURAM TALUK
THRISSUR DISTRICT.

BY ADV. SMT.K.V.BHADRA KUMARI

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:

1. HELPINE HIRE PURCHASE
SOUTH JUNCTION CHALAKUDY
REPRESENTED BY PARTNER JOHN @ JOHNSON
S/O.PALLISSERY RAPPAI, KUTTICHIRA P.O., CHALAKUDY VIA
THRISSUR DISTRICT.-680001

2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031

R2 BY PUBLIC PROSECUTOR SMT.MADHUBEN M.

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.

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Crl.R.P. No.108 OF 2015

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Dated this the 23rd day of January, 2015

ORDER

This revision petition is directed against the judgment dated 17.11.2014 in Crl.Appeal No.230 of 2011 passed by the Court of III Additional Sessions Judge, Thrissur confirming the conviction and modifying the sentence imposed on the revision petitioner as per judgment in C.C.No.486 of 2009 of the Court of Judicial first Class Magistrate, Chalakudy. The revision petitioner was tried for an offence under section 138 of the Negotiable Instruments Act. The case of the complainant/first respondent herein is that to discharge the legally enforceable debt arising out of a loan transaction, the petitioner, issued Ext.P1 cheque for ₹51750. The said cheque, on its presentation, was dishonoured on the ground of insufficiency of funds. Thereupon, the complainant issued statutory notice informing the petitioner regarding the factum of dishonour of the cheque and calling upon him to pay the amount due. However, the petitioner

failed to pay the amount within the statutorily prescribed time. It was in the said circumstances that the complaint was filed by the complainant which was later taken on file as C.C.No.486 of 2009 by the learned Magistrate. On due process, the revision petitioner herein appeared before the trial court and particulars of the offence were read out and explained to him. He pleaded not guilty and claimed to be tried. On the side of the prosecution, PW1 and PW2 were examined and Exts.P1 to P7 were marked to establish the charge against the revision petitioner/accused. After the closure of the evidence of the complainant, the revision petitioner was examined under section 313 Cr.P.C and he denied all the incriminating circumstances put to him. However, the petitioner did not adduce any evidence, either oral or documentary. On careful evaluation of the evidence on record, the trial court found that the complainant has succeeded in establishing that the revision petitioner herein had committed the offence under section 138, NI Act. Accordingly, he was found guilty and convicted

thereunder. Upon such conviction, he was sentenced to undergo simple imprisonment for three months. He was also directed to pay a compensation of ₹51750 and in default of payment of compensation, to undergo simple imprisonment for a further period of six months. Feeling aggrieved by the same, the petitioner filed Crl.Appeal No.230 of 2011 before the appellate court. Evidently, the petitioner raised various contentions to mount challenge against the judgment in C.C.No.486 of 2009. After a careful evaluation of the evidence on record, the appellate court found no merit in such contentions and declined to interfere with the judgment of the trial court. Consequently, the judgment in C.C.No.486 of 2009 finding the petitioner guilty and convicting him for the offence under section 138, NI Act was confirmed by the appellate court. However, taking into account the attending circumstances and the settled position that in the case of dishonour of cheque, the pecuniary aspect has to be given priority over the punitive aspect, the substantive sentence was

modified as imprisonment till the rising of court. The direction to pay compensation of ₹51750 to the complainant under section 357(3) Cr.P.C was maintained. However, the direction to undergo simple imprisonment for a period of six months in default of payment compensation was reduced to simple imprisonment for a period of one month.

2. I have heard the learned counsel for the petitioner. Though the petitioner had taken up a contention that he had effected repayment towards the loan account, he had not produced any documents to establish the factum of repayment before the courts below. At the same time, the said contention taken up by the petitioner itself would reveal that the petitioner had a transaction with the first respondent herein. In such circumstances, based on the evidence on record, I do not find any fault with the courts below in arriving at the conclusion that a legally enforceable debt occurred in

the transaction between the petitioner and the first respondent and it is to discharge the said legally enforceable debt that Ext.P1 cheque was issued and that the documents produced would establish that Ext.P1 cheque on presentation got dishonoured for a reason making him liable for prosecution for an offence under section 138 NI Act. It is after considering all such aspects and after a careful evaluation of the evidence on record that the courts below arrived at the conclusion that the complainant succeeded in establishing the charge of commission of offence under section 138 of NI Act against the revision petitioner. There cannot be any doubt with respect to the position that in a matter where conviction has been entered into concurrently by the courts below and an interference inviting revisional jurisdiction is possible if only the petitioner establishes a case of utter, perverse appreciation of evidence or that the conclusions and findings arrived at, were totally against the weight of evidence. After a careful consideration of the evidence on record, I do not find any reason to hold that the

conclusions and findings arrived at by the courts below are against the weight of evidence. No error in law was also brought to my notice. In such circumstances, there is no reason for interfering with the conviction concurrently entered against the petitioner by the courts below. Hence, the conviction imposed against the revision petitioner is confirmed. Obviously, upon such conviction, the petitioner was imposed with sentence to undergo simple imprisonment for six months by the trial court. Evidently, the appellate court interfered with the substantive sentence and modified it to imprisonment till the rising of court. When once it is found that the conviction entered against the petitioner is in order, I do not find any reason to hold that the sentence imposed against him till the rising of court is exorbitant warranting interference. The amount ordered to be paid as compensation is only the amount covered by Ext.P1 cheque drawn on 7.1.2009. The appellate court modified the default clause and the period of imprisonment in such eventuality was

reduced to one month from six months. In such circumstances, I find no reason to interfere with the modified sentence passed by the appellate court. In that view of the matter, the sentence imposed on the revision petitioner for the offence under section 138, NI Act is also confirmed. When this Court was about to dispose of the matter without any qualification the learned counsel for the revision petitioner submitted that taking into account the financial stringency the revision petitioner may be granted some reasonable time for depositing the amount of compensation. Having considered the said submission, I think, in the interest of justice, the learned Magistrate can be directed to keep in abeyance the execution of sentence imposed against the revision petitioner for a period of four months to enable him to pay the amount of compensation as directed by learned Magistrate on 5.2.2011 and to suffer the sentence of imprisonment till the rising of court. It is made clear that in case of failure on the part of the revision petitioner to pay the amount of compensation and to

appear to suffer the imprisonment till the rising of court within the above stipulated time, the learned Magistrate take appropriate steps in accordance with law, forthwith.

Subject to the above, this revision petition is dismissed.

**Sd/-
C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

