

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

Crl.Rev.Pet.No. 109 of 2015 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 50/2013 of IIND ADDITIONAL
SESSIONS COURT,THODUPUZHA DATED 25-02-2014

AGAINST THE JUDGMENT IN S.T.NO. 32/2012 of JUDICIAL FIRST CLASS
MAGISTRATE COURT.-II,THODUPUZHA DATED 27-02-2013

REVISION PETITIONER/APPELLANT/ACCUSED:

GIGI, AGED 36 YEARS
S/O.KRISHNANKUTTY, PAMBOORICKAL HOUSE, ARAKULAM P.O.
ARAKULAM VILLAGE, THODUPUZHA TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE OF KERALA:

1. THANKAMANI VIJAYAN, AGED 52 YEARS
W/O.VIJAYAN, MANAPPURATHU HOUSE, KANJAR P.O.
VELLIYAMATTOM VILLAGE, THODUPUZHA TALUK-677001
2. THE STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA AT ERNAKULAM-682031

R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 27-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

dlk

C.T.RAVIKUMAR, J.

Crl.R.P.No.109 2015

Dated 27th January, 2015

ORDER

This revision petition is directed against the judgment in Crl.A.No.50 of 2013 of the Court of II Additional Sessions Judge, Thodupuzha confirming the conviction and modifying the sentence imposed on the petitioner in S.T.No.32 of 2012 of the Court of Judicial First Class Magistrate-II, Thodupuzha. The petitioner was tried for the offence punishable under Section 138 of the Negotiable Instruments Act. The allegation of the first respondent/complainant is that the petitioner borrowed an amount of ₹ 1,00,000/- and in discharge of the said legally enforceable debt he issued Ext.P1 cheque. But, on presentation for encashment the said cheque was dishonoured due to insufficiency of fund in the account of the revision petitioner. Thereupon, the complainant issued a notice intimating the revision petitioner of the dishonour of the cheque and calling upon him to pay the amount due. But, the same was returned as unclaimed. It is the failure on the part of the 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.32 of 2012.

On due process the petitioner appeared before the court and the particulars of the charge were read over and explained to him and the petitioner pleaded not guilty. The complainant got himself examined as PW1 and got marked Exts.P1 to P6. On the closure of the evidence of the complainant the 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 four months and to pay a fine of ₹ 1,00,000/- and in default of payment of fine to undergo simple imprisonment for two months. The fine amount was directed to be paid to the complainant under Section 357(1) of Cr.P.C. . The petitioner took up the matter in appeal as Crl.A.No.50 of 2013 before the Court of II Additional Sessions Judge, Thodupuzha. Various contentions were raised against the judgment of the trial court. However, the learned II Additional Sessions Judge found no ground to invoke the appellate jurisdiction. It was found that the conclusions and findings of the trial court are perfectly in tune with the evidence adduced. In the said circumstances the appellate court confirmed the conviction but, at the

same time, modified the sentence. The substantive sentence was reduced to simple imprisonment till the rising of the court. The petitioner was ordered to pay fine of ₹ 1,00,000/- and the same was ordered to be paid, on realisation, to the complainant as compensation under Section 357(1) Cr.P.C.. In default of payment the petitioner was directed to undergo simple imprisonment for a period of two months. The captioned revision petition has been filed against the said judgment confirming the conviction and modifying the sentence as aforesaid.

2. I have heard the learned counsel for the petitioner and also the learned Public Prosecutor.

3. As noticed hereinbefore, conviction was entered concurrently against the petitioner and the sentence imposed against the petitioner by the trial court was modified by the appellate court. In such circumstances, a further interference by exercising the revisional jurisdiction is called for only if the petitioner succeeds in establishing that the appreciation of evidence by the trial court as also the appellate court is utterly perverse or that the conclusions arrived at are against the weight of the evidence. Having carefully gone through the pleadings in this revision petition and also after hearing the learned counsel for the petitioner I do not find any reason to interfere with the conviction

concurrently entered against the petitioner. No error in law was also brought out. In the said circumstances, the conviction entered against the petitioner under Section 138 of the Negotiable Instruments Act is liable to be confirmed.

4. With respect to the sentence, evidently, the appellate court interfered with the sentence and modified the sentence to suffer imprisonment till the rising of the court and to pay a fine of ₹ 1,00,000/-. The amount of fine on realisation was directed to be paid to the complainant. Since I have already found that no case has been brought out by the petitioner for interfering with the conviction entered against the petitioner concurrently by the courts below I do not find any reason to hold that the sentence imposed on the petitioner to undergo imprisonment till the rising of the court and to pay a fine of ₹ 1,00,000/- call for any interference. It is to be noted that ₹ 1,00,000/- is the amount covered by the cheque in question. When the amount of fine ordered to be paid is only the amount covered by the cheque I do not find any reason whatsoever to interfere with the sentence imposed by the trial court which was modified by the appellate court and hence, it is also liable to be confirmed. In the said circumstances, the sentence imposed against the petitioner is also liable to be confirmed. When this Court was about to dismiss the revision petition without any qualification the

learned counsel for the petitioner submitted that some reasonable time may be granted to the petitioner to effect payment of the amount of fine in view of the straitened circumstances. Having heard the learned counsel for the petitioner while dismissing this revision petition I am inclined to direct the learned Magistrate to keep in abeyance execution of the sentence of payment of fine for a period of five months to enable the petitioner to pay the same within the stipulated time. Ordered accordingly. In case of failure on the part of the petitioner to pay the amount of fine within the above stipulated time appropriate steps shall be taken in accordance with law to execute the sentence regarding imposition of fine. In the meanwhile, the petitioner shall appear before the trial court on 10.3.2015 to undergo the imprisonment till the rising of the court.

Subject to the above, this revision petition is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS