

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. 113 of 2015 ()

AGAINST THE JUDGMENT IN CRA 136/2013 of COURT OF ADDITIONAL SESSIONS
JUDGE, PALA DATED 31-10-2014

AGAINST THE JUDGMENT IN ST 2492/2011 of COURT OF JUDICIAL FIRST CLASS
MAGISGTRATE-I, PALA DATED 12-04-2013

REVISION PETITIONER/APPELLANT/ACCUSED:

K.TERAN PIOUS, AGED 31 YEARS
S/O K.M. PIOUS, KALCHIRAYIL HOUSE, KADAPLAMATTAM KARA
KIDANGOOR VILLAGE, MEENACHIL TALUK

BY ADVS.SRI.P.BABU KUMAR
SRI.P.YADHU KUMAR

RESPONDENTS/RESPONDENTS/COMPLAINATS:

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1. STATE OF KERALA
REP. BY PUBLIC PROSECTOR,
HIGH COURT OF KERALA
ERNAKULAM 682031
 2. BIJU GEORGE, S/O K.M. GEORGE,
PARACKAL HOUSE, ANDOOR KARA,
ELACKADU VILLAGE
MEENACHIL TALUK-686589

R1 BY PUBLIC PROSECUTOR SRI.M.MADHUBEN

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

Crl.Rev.Pet.No. 113 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE-A: TRUE COPY FO THE JUDGMENT IN S.T.NO.2492/2011 OF J.F.C.M.
COURT-I, PALA DATED 12.4.2013.

ANNEXURE-B: CERTIFIED COPY OF THE JUDGMENT IN CRL.APPEAL NO.136/2013
IN THE COURT OF SESSIONS, KOTTAYAM DIVISION DATED
31.10.2014.

// TRUE COPY //

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P.S. TO JUDGE

C.T.RAVIKUMAR, J.

Crl.R.P.No.113 of 2015

Dated 23rd January, 2015

ORDER

The revision petitioner is the convict in S.T.No.2492 of 2011 on the files of the Court of Judicial First Class Magistrate-I, Pala. He was tried and convicted for the offence under Section 138 of the Negotiable Instruments Act (for short 'N.I.Act'). The case of the 2nd respondent/complainant was that the revision petitioner availed a Traders loan from Kidangoor Branch of State Bank of Travancore and the complainant was the surety for the said loan transaction. When the revision petitioner defaulted repayment towards the loan amount the complainant paid the entire amount due to the Bank. In order to discharge the said liability the revision petitioner issued two cheques for ₹ 36,000/- dated 25.5.2011 and ₹ 40,000/- dated 25.10.2011 respectively in favour of the complainant. When the cheque for ₹ 40,000/- dated 25.10.2011 was presented for encashment it was dishonoured on the ground of insufficiency of fund in the account maintained by the revision petitioner. 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 private complaint which was later taken on file and registered as S.T.No.2492 of 2011. 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 substantiate the charge against the revision petitioner. The complainant himself got examined as PW1 and the Manager of the Bank concerned was examined as PW2. Exts.P1 to P7 were marked on his side. Upon closure of the evidence of the complainant the revision petitioner was examined under Section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances put to him. However, the revision petitioner herein has not adduced any defence evidence. On an evaluation of the evidence on record the learned Magistrate found that the complainant proved beyond reasonable doubt that the accused/revision petitioner has committed an offence under Section 138 of N.I.Act and consequently, convicted him thereunder and sentenced to undergo simple imprisonment for three months and he was directed to pay a compensation of ₹ 40,000/- to the complainant under Section 357(3) of Cr.P.C. and in default of payment to undergo simple imprisonment for a further period of two months. Aggrieved by the said

judgment Crl.A.No.136 of 2013 was filed by the revision petitioner. 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 invite no appellate interference and consequently dismissed the appeal as per the impugned judgment.

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. 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 revision petitioner herein in discharge of a legally enforceable debt owing to the second 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 beyond any reasonable doubt. It is the result of such consideration and consequential findings based on evidence that culminated in the impugned judgments. In a case where conviction was entered into concurrently unless it is established that the appreciation of evidence was utterly perverse or that the findings were

based on no evidence or that there occurred an error of law interference in exercise of revisional jurisdiction would not be justified. The revision petitioner has failed to make out any such ground. In the circumstances, I find no ground to interfere with the conviction of the revision petitioner for the offence punishable under Section 138 of the N.I. Act. Accordingly, it is confirmed. The question that survives for consideration is whether the sentence imposed therefor invites interference by invoking the revisional jurisdiction. The Hon'ble Apex Court in Damodar S. Prabhu v. Sayed Babalal (AIR 2010 SC 1907) held that offences under Section 138, N.I. Act are basically of civil nature, but criminal colour was given by incorporating the same in the Negotiable Instruments Act. Further, the intention of the legislature in enacting the said provision was held as one to make the drawer of the cheque to pay the amount, by giving an opportunity and not to send him to jail. In this case, Ext.P1 cheque is for ₹ 40,000/- and the courts below have ordered for payment of compensation of ₹ 40,000/- under Section 357(3), Cr.P.C. with a default clause. When that be so, imbibing the spirit of the decision in Damodar S. Prabhu's case (supra) it would only be proper in the interest of justice to modify the substantive sentence imposed on the revision petitioner for the conviction under Section 138 of the N.I. Act. In the said circumstances, the substantive sentence is reduced to imprisonment till the rising of the court. At the same time, I am of the considered view that the direction to pay compensation and the default sentence under

the impugned appellant judgment call for no interference. The learned Magistrate is directed to keep in abeyance the execution of the sentence and initiation of steps for recovery for a period of one month from the date of receipt of copy of this order. Within the above stipulated period the revision petitioner shall pay the amount and appear before the trial court to suffer imprisonment till rising of the court. In case of failure on the part of the revision petitioner to pay the amount and to appear to suffer the imprisonment within the above stipulated time, the learned Magistrate shall take appropriate steps in accordance with law, forthwith.

The revision petition is allowed in part to the above extent.

Sd/-
C.T.RAVIKUMAR
Judge

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