

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. 115 of 2015 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 215/2011 of IIND ADDITIONAL
SESSIONS COURT,TRIVANDRUM DATED 21-07-2014

AGAINST THE JUDGMENT IN S.T.NO. 2744/2006 of JUDICIAL FIRST CLASS
MAGISTRATE-II,ATTINGAL DATED 31-03-2011

REVISION PETITIONER/APPELLANT/ACCUSED:

BABURAJ, AGED 51 YEARS
SINDHU BHAVAN, PAPPALA, KILIMANNOOR
THIRUVANANTHAPURAM DIST.

BY ADVS.SRI.LIJU. M.P
SRI.A.SABEER

RESPONDENT(S)/NON PARTY AND COMPLAINANT:

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1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
 2. JAYA KUMAR,
S/O. SIVASANKARAN PILLAI, SARADA BHAVAN, CHOOTTAYIL
KILLIMANNOOR, THIRUVANANTHAPURAM DIST-695601

R1 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN
R2 BY ADV. SRI.LATHEESH SEBASTIAN

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.115 of 2015

Dated 27th January, 2015

ORDER

This revision petition is directed against the judgment in Crl.A.No.21 of 2011 of the Court of Additional Sessions Judge-II, Thiruvananthapuram confirming the conviction and modifying the sentence imposed on the petitioner in S.T.No.2744 of 2006 of the Court of Judicial First Class Magistrate-II, Attingal. The petitioner was tried for the offence punishable under Section 138 of the Negotiable Instruments Act. The allegation of the second respondent/complainant is that the petitioner borrowed an amount of ₹ 50,000/- from him 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.2744 of

2006. 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 P5. On the closure of the evidence of the complainant the petitioner herein was examined under Section 313 Cr.P.C. During such examination he submitted that he did not know how the complainant got the cheque in question which was handed over by him to one Rajan as security for a transaction between them. He contended that he borrowed ₹ 10,000/- from the said Rajan and repaid the amount within one month. After repayment the said Rajan died and so he could not obtain the cheque given as security from 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 one year and also to pay an amount of ₹ 50,000/- as compensation under Section 357(3) Cr.P.C. and in default of payment of compensation to undergo simple imprisonment for three months. The petitioner took up the matter in appeal as Crl.A.No.215 of

2011 before the Court of Additional Sessions Judge-II, Thiruvananthapuram. Various contentions were raised against the judgment of the trial court. However, the learned 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 a fine of ₹ 50,000/- 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 imprisonment for a period of three months. The accused was also given one months' time to pay the compensation. 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 concurrently

entered against the petitioner and the sentence imposed against the petitioner by the trial court was modified by the appellate court as mentioned above. 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 reached 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 have no hesitation to hold that no such grounds were made out by the petitioner to compel this Court to exercise the revisional jurisdiction to interfere with the concurrent finding of conviction entered against him. No error in law was also brought to my notice. Virtually, the petitioner took up only the contentions which were unsuccessfully raised before the appellate court. In the said circumstances, the conviction entered against the petitioner under Section 138 of the Negotiable Instruments Act is liable to be confirmed.

4. Obviously, the trial court sentenced the petitioner to undergo simple imprisonment for a period of one year and also to pay a compensation of ₹ 50,000/- to the complainant under Section

357(3) Cr.P.C. and in default of payment of compensation to undergo simple imprisonment for three months. After careful evaluation of the circumstances the appellate court interfered with the sentence and modified it. The substantive sentence to undergo simple imprisonment for one year was reduced to simple imprisonment till the rising of the court. Taking note of the fact that the total amount covered by the cheques is ₹ 50,000/- the petitioner was directed to pay a fine of ₹ 50,000/- and the same, on realisation, was ordered to be paid to the complainant as compensation under Section 357(1) Cr.P.C. and in default to undergo imprisonment for three months. I do not find any reason whatsoever to interfere with the sentence imposed by the trial court which was modified by the appellate court as, according to me, it is the condign punishment for the offence. Hence, it 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 the Magistrate shall take appropriate steps for execution of the sentence, as regards imposition of fine, in accordance with law. In the meanwhile, the petitioner shall appear before the trial court on or before 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