

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

Crl.Rev.Pet.No. 121 of 2015 ()

AGAINST THE JUDGMENT IN CRA 416/2010 of THE COURT OF ADDL. DISTRICT &
SESSIONS JUDGE - IV, KOLLAM DATED 28-08-2014

AGAINST THE JUDGMENT IN CC 320/2007 of THE COURT OF JUDICIAL FIRST
CLASS MAGISTRATE, SASTHAMCOTTA DATED 07-09-2010

REVISION PETITIONER/APPELLANT/ACCUSED:

MR.JAMES
S/O. MANUAL, JINU NIVAS, MANAKKARA
SASTHAMCOTTA, VILLAGE KOLLAM.

BY ADVS.SRI.V.JAYAPRADEEP
SRI.SHANE WILFRED MORRIS

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

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1. K.P.CHANDRAN
LEKSHMI NIVAS, MANAKKARA MURI,
SASTHAMCOTTA VILLAGE
KOLLAM.
 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 24-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.R.P.No.121 of 2015

Dated 24th February, 2015

ORDER

This revision petition is directed against the conviction concurrently entered against the revision petitioner for the offence under Section 138 of the Negotiable Instruments Act. The revision petitioner was the accused in C.C.No.320 of 2007 and the first respondent herein was the complainant therein. The case of the first respondent was that the revision petitioner borrowed an amount of ₹ 2,00,000/- from him and repaid ₹ 1,20,000/- on 18.10.2003 and for the balance amount of ₹ 80,000/- he issued Ext.P1 cheque dated 16.10.2006 drawn on his account maintained at the South Indian Bank, Sasthamcotta Branch. When the said cheque presented for encashment it was bounced due to paucity of funds. Thereupon, statutory notice was issued within the prescribed time limit intimating the petitioner of the factum of 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 effect payment of the amount covered by the cheque within the statutorily prescribed period that constrained the first respondent to file the complaint. Since there is no case for the revision petitioner regarding the violation of any statutory requirements by the

complainant and procedures by the trial court I do not think it necessary to consider such aspects. Evidently, to bring home the charge against the revision petitioner the complainant/the first respondent got himself examined as PW1 and got marked Exts.P1 to P5. On 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. He produced Exts.D1 to D3 as defence evidence. At the same time, he did not mount the box to give evidence. After a careful evaluation of the evidence the trial court found that the first respondent herein/the complainant has succeeded in establishing that the cheque in question was issued in discharge of a legally enforceable debt and it was dishonoured on a ground referable to the provisions under Section 138 of N.I. Act. Upon such consideration the trial court found that the revision petitioner has committed the offence under Section 138 of N.I.Act. Consequently, he was convicted thereunder and sentenced to undergo simple imprisonment for three months under Section 255(2), Cr.P.C. and he was directed to pay a compensation of ₹ 80,000/- to the complainant under Section 357(3), Cr.P.C. and in default of payment of compensation he was directed to undergo simple imprisonment for a period of three months. Feeling aggrieved by the same the petitioner filed Crl.A.No.416 of 2010. The petitioner pointedly challenged the finding of the trial court regarding the issuance of the cheque and contended that he had not

issued Ext.P1 cheque to the complainant. The appellate court considered the entire evidence and found no reason to uphold the said contention of the revision petitioner. After a careful consideration of the evidence the appellate court found that the conclusions arrived at by the trial court are perfectly in tune with the evidence on record and consequently, confirmed the conviction entered against the petitioner. Then, the appellate court considered the question whether the sentence imposed on the petitioner invites any interference. The appellate court found that the substantive sentence to undergo simple imprisonment for three months imposed by the trial court requires interference and modification and modified it as imprisonment till rising of the court. At the same time, taking into account the fact that the amount directed to be paid as compensation under Section 357(3) Cr.P.C. is the amount covered by the cheque in question the appellate court sentenced the petitioner to pay a fine of ₹ 80,000/- and in default of payment he was directed to undergo simple imprisonment for three months. The amount of fine on realisation was directed to be paid to the complainant under Section 357(1), Cr.P.C. It is thus evident that conviction under Section 138, N.I. Act was entered concurrently by the courts below. The revision petitioner could not make out a case of perverse appreciation of evidence by the courts below or any error in law. In other words, the revision petitioner has failed to bring out any ground so as to compel this Court to interfere with the

impugned judgment in exercise of the revisional jurisdiction. In short, the conviction entered concurrently against the revision petitioner is liable to be confirmed and accordingly, it is confirmed. Since I do not find any reason to interfere with the conviction the question to be looked into is whether the sentence imposed for the conviction under Section 138 of N.I. Act by the appellate court is to be maintained or not. For the conviction under Section 138, N.I. Act the sentence imposed by the trial court was imprisonment for three months. Besides, he was also directed to pay a compensation of ₹ 80,000/- to the complainant under Section 357(3) Cr.P.C. The appellate court has interfered with the same and reduced the substantive sentence to imprisonment till the rising of the court. The petitioner was also sentenced to pay a fine of ₹ 80,000/- to be paid to the complainant under Section 357(1) Cr.P.C. As noticed hereinbefore, Erxt.P1 is dated 23.10.2009 and the amount shown therein is ₹ 80,000/-. Taking into account all aspects I do not find any reason to interfere with the sentence thus imposed by the appellate court in substitution of the sentence imposed by the trial court. I am of the view that a further interference in exercise of revisional jurisdiction is not called for in this proceedings. Therefore, sentence is also liable to be confirmed. Accordingly, it is also confirmed. When this Court was about to dismiss this matter holding such a view the learned counsel for the petitioner sought for some reasonable time for the petitioner to effect

payment of the fine amount. In the said circumstances, the learned Magistrate is directed to keep in abeyance the execution of sentence relating payment of fine for a period of five months to enable the petitioner to pay the amount of fine. Needless to say that in default of the petitioner to pay the said amount within the above stipulated time the learned Magistrate shall take appropriate action, in accordance with law. The petitioner shall appear before the trial court to undergo the sentence of imprisonment till the rising of the court on 5.8.2015.

Subject to the above, this revision petition is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS