

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

Crl.Rev.Pet.No. 133 of 2015 ()

AGAINST THE JUDGMENT IN CRA 2/2006 of COURT OF ADDL. SESSIONS JUDGE,
THALASSERY DATED 29.6.2011

AGAINST THE JUDGMENT IN STC 475/2005 of COURT OF JUDICIAL FIRST CLASS
MAGISTRATE, TALIPARAMBA DATED 7.12.2005

REVISION PETITIONER/APPELLANT/ACCUSED:

M.P.AMBASS, AGED 54 YEARS,
S/O. ABOOBACKER, C/O.PERINTAKATHU HOUSE
RAMANTHALI AMSOM DESOM, ETTIKULAM P.O.
KANNUR DISTRICT.

BY ADVS.SRI.O.V.MANIPRASAD
SRI.JOLLY GEORGE

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

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1. ADAVICHIRA ANTONY, AGED 65 YEARS
S/O. ANTONY, NADUVIL AMSOM DESOM, P.O. NADUVIL
KANNUR - 670 582.
 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 03-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.R.P.No.133 of 2015

Dated 3rd February, 2015

ORDER

This revision petition is directed against the judgment in Crl.A.No.2 of 2006 of the Court of Additional Sessions Judge, Thalassery confirming the conviction and modifying the sentence imposed on the revision petitioner in STC.475 of 2005 by the Court of Judicial First Class Magistrate, Thaliparamba. The revision petitioner was tried for the offence punishable under Section 138 of the Negotiable Instruments Act. The allegation of the first respondent/complainant was that the revision petitioner borrowed an amount of ₹ 16,525/- 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 maintained by 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 revision petitioner did not pay the amount. It is the failure on the part of the revision 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 STC.No.475 of 2005. On due process the revision petitioner appeared before the court and the particulars of the charge were read over and explained to him and the revision 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 revision petitioner herein was examined under Section 313 Cr.P.C. and he denied all the incriminating circumstances put to him and stated that he issued a blank cheque in favour of the complainant when the complainant demanded ₹ 10,000/- at the time of an accident involving the vehicle of the revision petitioner. 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 revision 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 three months and also to pay an amount of ₹ 16,525/- as compensation under Section 357(3), Cr.P.C. In default of payment of compensation he was ordered to undergo simple imprisonment for a further period of two months. The compensation amount, if realised, was directed to be paid to the complainant. The revision petitioner took up the matter in appeal as Crl.A.No.2 of 2006 before the Court of Additional Sessions Judge, Thalassery. 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 imprisonment till the rising of the court. The direction to pay compensation of ₹ 16,525/- and the order to pay it, on realisation, to the complainant under Section 357(3) Cr.P.C. were maintained. Further, in default of payment the revision petitioner was ordered to undergo simple imprisonment for a period of one month. The revision petitioner still feels aggrieved and hence, this revision petition.

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

3. As noticed hereinbefore, conviction was concurrently entered against the revision petitioner by the courts below. In such circumstances, a further interference by exercising the revisional jurisdiction is called for only if the revision petitioner succeeds in establishing that the appreciation of evidence by the courts below is utterly perverse or that the conclusions reached are based on no

evidence. Error of law is yet another ground for interference. Having carefully gone through the pleadings in this revision petition and also after hearing the learned counsel for the revision petitioner I have no hesitation to hold that no such grounds were made out by the revision petitioner to compel this Court to exercise the revisional jurisdiction to interfere with the concurrent finding of conviction entered against him. Virtually, the revision petitioner took up only the contentions which were unsuccessfully raised before the appellate court. In the said circumstances, the conviction entered against the revision petitioner under Section 138 of the Negotiable Instruments Act is liable to be confirmed and accordingly, it is confirmed.

4. Obviously, the trial court sentenced the revision petitioner to undergo simple imprisonment for a period of three months besides ordering to pay a compensation of ₹ 16,525/- to the complainant under Section 357(3), Cr.P.C. and to undergo simple imprisonment for two months in default of payment of compensation. After careful evaluation of the circumstances the appellate court interfered with the sentence and modified it. The substantive sentence to undergo simple imprisonment for three months was reduced to imprisonment till the rising of the court. Taking note of the fact that the amount directed to be paid as compensation viz., ₹ 16,525/- is the amount covered by Ext.P1 cheque

and it is dated 10.12.1991 I do not find any reason whatsoever to interfere with the modified sentence imposed by the appellate court. Hence, it is also liable to be confirmed and accordingly, it is confirmed. When this Court was about to dismiss the revision petition without any qualification the learned counsel for the revision petitioner submitted that some reasonable time may be granted to the revision petitioner to effect payment of the amount of compensation in view of the straitened circumstances. Having heard the learned counsel for the revision petitioner while dismissing this revision petition I am inclined to grant the revision petitioner a month from the date of receipt of copy of this order to pay the same and to appear before the trial court to suffer the sentence and the learned Magistrate is directed to keep in abeyance execution of the sentence till such time. Ordered accordingly. In case of failure on the part of the revision petitioner to pay the amount of compensation and to appear before the court to undergo the sentence, within the above stipulated time, the Magistrate shall take appropriate steps for execution of the sentence, in accordance with law.

Subject to the above, this revision petition is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS