

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

Crl.Rev.Pet.No. 134 of 2015 ()

AGAINST THE JUDGMENT IN CRA 469/2012 of COURT OF ADDITIONAL
DISTRICT & SESSIONS JUDGE, THIRUVANANTHAPURAM DATED 16-06-2014

AGAINST THE JUDGMENT IN ST 1526/2007 of COURT OF JUDICIAL MAGISTRATE
OF THE FIRST CLASS-2, THIRUVANANTHAPURAM DATED 29-09-2012

REVISION PETITIONER/APPELLANTS/ACCUSED:

S A PRASAD
TC 43/986(4), PARITHIKUZH
MANACAUD PO, THIRUVANANTHAPURAM.

BY ADV. SRI.SUMAN CHAKRAVARTHY

RESPONDENTS/RESPONDENTS/STATE & COMPLAINANT:

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1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.
 2. THE THIRUVANANTHAPURAM TALUK TAXI DRIVERS
CO-OPERATIVE SOCIETY LTD.NO.T/723 FORT PO
THIRUVANANTHAPURAM - 695 001.

R2 BY ADV. SRI.D.SAJEEV
R2 BY ADV. SRI.K.R.HARIDAS
R1 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 13-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.R.P.No.134 of 2015

Dated 13th March, 2015

ORDER

This revision petition is filed against the conviction concurrently entered against the revision petitioner under Section 138 of the Negotiable Instruments Act. The 2nd respondent/complainant filed the complaint which was taken on file and registered as S.T.No1526 of 2007 alleging that Ext.P1 cheque issued by the revision petitioner for discharging a legally enforceable debt on presentation got dishonoured owing to paucity of fund in the account maintained by the revision petitioner. Statutory notice intimating the revision petitioner regarding the dishonour of the cheque and calling upon him to pay the amount due was issued within the prescribed time limit. 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 said complaint. 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 and claimed to be tried. Thereupon, the 2nd respondent/complainant got examined as PW1 and got marked Exts.P1 to P5 to bring home the

charge against the revision petitioner. The revision petitioner denied all the incriminating circumstances put to him in the examination under Section 313, Cr.P.C. conducted after the closure of the evidence of the complainant. However, he did not adduce any defence evidence. On appreciating the evidence on record the trial court found that the 2nd respondent complainant succeeded in establishing the commission of offence under Section 138 of N.I. Act by the revision petitioner conclusively and consequently convicted him thereunder and sentenced him to undergo simple imprisonment for 9 months. He was also directed to pay an amount of ₹ 1,65,700/- with interest at the rate of 9% per annum from 5.7.2007 till realisation as compensation under Section 357(3) Cr.P.C. The revision petitioner took up the matter in appeal as Crl.A.No.469 of 2012. The conviction entered against the revision petitioner by the trial court was confirmed by the appellate court. But, the appellate court interfered with the sentence imposed for the conviction under Section 138 of N.I. Act. The substantive sentence was modified as imprisonment till rising of the court and the direction to pay the amount of compensation was maintained. Noting that there was no default sentence in the judgment of the trial court the appellate court directed that the revision petitioner shall undergo simple imprisonment for a period of three months in case of failure to pay the amount of

compensation. This revision petition is filed in the said circumstances.

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. As noticed hereinbefore, conviction was entered against the revision petitioner under Section 138 of N.I. Act concurrently by the courts below. In such circumstances, the revision petitioner has to show that appreciation of the evidence by the courts below is utterly perverse or the conclusions arrived at by the courts below are totally against the weight of the evidence, so as to compel this Court to interfere with the conviction in exercise of the revisional jurisdiction. In this case, the revision petitioner has failed to make out any such case. No error in law was also brought to my notice. Therefore, I am of the view that the conviction concurrently entered against the revision petitioner for the offence under Section 138 of N.I. Act calls for no interference in exercise of the revisional jurisdiction. Hence, it is confirmed.

4. I have already referred to the sentence imposed by the trial court for the conviction under Section 138 of N.I. Act on the revision

petitioner. The appellate court while confirming the conviction interfered with the sentence and as noticed hereinbefore, the substantive sentence was reduced to imprisonment till rising of the court. The question to be considered is whether the direction to pay compensation under Section 357(3) Cr.P.C. calls for any interference ? In invocation of the power under Section 357(3) Cr.P.C., certainly the court is empowered to specify in the order the amount of compensation to be given to the person who suffered loss for which the accused has been sentenced. But, at the same time, such an order cannot be permitted to partake the character of a decree. A perusal of the judgment of the trial court would reveal that for the conviction of the revision petitioner under Section 138 of the N.I. Act he was sentenced to undergo simple imprisonment for nine months. He was also directed to pay a compensation of ₹ 1,65,700/- with interest at the rate of 9% per annum from 5.7.2007 till realisation of the amount. The order to pay compensation was maintained by the appellate court. The amount of ₹ 1,65,700/- is the amount covered by the cheque. In such circumstances, direction to pay compensation reckoning the same is permissible. In this case, what was ordered is to pay an interest for the aforementioned amount at the rate of 9% from 5.7.2007 till realisation. I am of the view that the purpose of the provisions under Section 357 Cr.P.C. is to empower the courts to award

compensation to enable the person who suffered the loss on account of the action of the accused for which he was sentenced, to get compensation. A perusal of the provisions under the Negotiable Instruments Act as also the provisions under Section 357 Cr.P.C. would not indicate that the order to be passed in a criminal proceedings for the offence under Section 138, N.I. Act should partake the character of a decree. What is to be considered is what should be the amount which could be awarded as compensation taking into account the action on account of which the concerned complainant suffered the loss or injury and for which the accused was sentenced. True that in the decisions in Damodar S. Prabhu v. Sayed Babalal (AIR 2010 SC 1907) and Kaushalya Devi Massand v. Roopkishore (AIR 2011 SC 2566) the Hon'ble Apex Court 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 the said circumstances, I find no infirmity in not awarding only the sentence of imprisonment till the rising of the court. At the same time, I am of the considered view that the direction to pay compensation calls for interference. Taking into account the fact that the cheque

amount is ₹ 1,65,700/- and Ext.P1 cheque is dated 5.7.2007 and that the trial court passed the judgment on 29.9.2012 and the appellate court judgment was passed on 16.6.2014 I am of the view that the revision petitioner can be directed to be given a compensation of ₹ 2,00,000/-. In the said circumstances, the order relating compensation under Section 357(3) Cr.P.C. is modified and the revision petitioner is directed to pay an amount of ₹ 2,00,000/- (Rupees Two lakhs only) to the complainant while maintaining the sentence to undergo imprisonment till the rising of the court. The default clause incorporated by the appellate court is maintained. In other words, in default of payment of compensation the revision petitioner shall undergo simple imprisonment for a period of three months. As per the order dated 3.2.2015 passed by this Court in this revision petition the revision petitioner has already deposited an amount of ₹ 50,000/-. Giving credit to the same the revision petitioner is directed to pay an amount of ₹ 1,50,000/- as compensation to satisfy the order relating payment of compensation. The learned Magistrate is directed to keep in abeyance execution of the sentence and initiation of steps for recovery of the amount of compensation, for a period of six months. 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.

This revision petition is thus allowed in part and disposed of as above.

Sd/-
C.T.RAVIKUMAR
Judge

TKS