

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

Crl.Rev.Pet.No. 148 of 2015 ()

AGAINST THE ORDER IN CrI.A. 312/2013 of I ADDL.SESIONS COURT,
KOTTAYAM DATED 05-11-2014
AGAINST THE JUDGMENT IN S.T 138/2012 of J.M.F.C.-II, VAIKOM

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

PRAMESH RAJAGOPAL, AGED 39 YEARS
S/O.RAJAGOPAL, NAGAVALLIYIL HOUSE, BALAN MENON ROAD
KALOOR, KOCHI-682019.

BY ADV. SRI.R.PREMCHAND

RESPONDENT(S)/1ST RESPONDENT & STATE/COMPLAINANT:

1. JAYAKUMAR D.
S/O.DAMODARAN, VALYATHARA HOUSE, PULINCHUVADU
N.E.WARD, VAIKOM P.O., VAIKOM TALUK
KOTTAYAM DISTRICT, PIN 686141.

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HON'BLE HIGH COURT OF KERALA AT ERNAKULAM.

R1 BY ADV. SRI.G.SREEKUMAR (CHELUR)
R1 BY ADV. SRI.NANDAGOPAL S.KURUP
R2 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
04-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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CRL.R.P. No.148 OF 2015

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Dated this the 4th day of March, 2015

ORDER

This revision petition is directed against the conviction concurrently entered against the revision petitioner under section 138 of the Negotiable Instruments Act. The allegation of the first respondent/complainant was that the revision petitioner borrowed an amount of ₹2,00,000/- 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 funds 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 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 S.T.No.138 of 2012. On due process, the revision petitioner appeared before the court and the particulars of the charge were read over and explained to him and he pleaded not guilty. To bring home the charge against the revision petitioner, 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. 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 six months and was also directed to pay a compensation of ₹2,00,000/- to the complainant under Section 357(3) of Cr.P.C and in default of payment of compensation, to undergo simple imprisonment for a further period

of six months. The revision petitioner took up the matter in appeal as CrI.A.No.312 of 2013 before the Court of Additional Sessions Judge-I, Kottayam. Various contentions were raised against the judgment of the trial court. However, the appellate court found that the conclusions and findings of the trial court to find the revision petitioner guilty are perfectly in tune with the evidence adduced and at the same time, the sentence imposed on him requires appellate interference. Consequently, while confirming the conviction, the substantive sentence of six months was set aside and the revision petitioner was sentenced to pay a fine of ₹2,54,000/-. In default of payment of fine, he was ordered to undergo simple imprisonment for three months and the amount of fine, if realised, was directed to be paid to the complainant as compensation under section 357 (1) Cr.P.C. This revision petition has been filed in the said circumstances.

2. I have heard the learned counsel for the revision petitioner, the learned counsel for the first respondent and also the

learned Public Prosecutor. Virtually, the revision petitioner reiterated the contentions raised by him in the appeal. Obviously, the courts below, on appreciation of evidence on record, convicted the revision petitioner for the offence under section 138 NI Act concurrently. In such circumstances, in order to make this Court to invoke the revisional jurisdiction, the revision petitioner has to make out a case of utter, perverse appreciation of evidence by the courts below or that the findings are totally against the weight of evidence. No error in law has been brought out to my notice. In short, the revision petitioner has failed to make out any such case warranting interference by this Court in exercise of the revisional jurisdiction. In the result, conviction of the revision petitioner under section 138 NI Act is hereby confirmed.

3. There cannot be any doubt with respect to the position that when the appellate court confirmed the conviction and set aside the substantive sentence of imprisonment, it is bound to pass an order on

sentence. It is in the said circumstances that while setting aside the sentence and interfering with the order for compensation the appellate court sentenced the revision petitioner to pay a fine of ₹2,54,000/-. Evidently, Ext.P1 cheque is dated 23.10.2011 and the amount covered by Ext.P1 cheque is ₹2,00,000/-. In such circumstances, I do not find any illegality or infirmity in the matter of imposition of fine of ₹ 254000/- on the revision petitioner. In view of the decision of the Hon'ble Apex Court in **Damodar S. Prabhu v. Sayed Babalal [2010 (2) KHC 428 (SC)]** in a case of dishonour of cheque, the pecuniary aspect has to be given priority over the punitive aspect and therefore, the action in setting aside the jail sentence and sentencing the revision petitioner to pay the aforesaid amount as fine and also to pay the same as compensation under section 357(1) Cr.P.C to the complainant on realisation cannot be said to be illegal or excessive warranting interference. In the circumstances, I do not find any reason to interfere with the sentence imposed by the appellate court and accordingly, it is confirmed. When this court was about to dismiss the

matter, the learned counsel for the revision petitioner submitted that some reasonable time may be granted to the revision petitioner to pay the amount of fine. Having heard the learned counsel for the revision petitioner and the learned counsel for the first respondent, I am of the view that appropriate direction could be issued to the learned Magistrate. In the result, while confirming the conviction as also the sentence, the learned Magistrate is directed to keep in abeyance the execution of sentence for a period of six months to enable the revision petitioner to deposit the amount of fine within the said period. In case of failure on the part of the revision petitioner to pay the amount within the stipulated time, the learned Magistrate shall take appropriate steps in accordance with law, forthwith.

Subject to the above, this revision petition is dismissed.

Sd/-

**C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010