

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

Crl.Rev.Pet.No.153 of 2015

**C.C.NO.152/2009 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT,KOTHAMANGALAM.
Crl.A.NO.167/2013 OF THE ADDITIONAL DISTRICT AND SESSIONS
COURT,MUVATTUPUZZHA.**

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REVISION PETITIONER/APPELLANT/ACCUSED:

**K.A.SHAJI,S/O.ACHUTHAN,KANNIVILATHU HOUSE,
AYYAPPANKOIL,MATTUKATTA,IDUKKI DISTRICT.**

**BY ADVS.SRI.T.A.UNNIKRISHNAN
SRI.K.S.PRAVEEN**

RESPONDENT'S/RESPONDENTS/COMPLAINANT:

- 1. RELIANT HIRE PURCHASE COMPANY LTD.
KOTHAMANGALAM,REPRESENTED BY
POWER OF ATTORNEY HOLDER SANTHEESH.P.S.,
PULLATTU HOUSE,THRIKKARIYOOR,
AYAKKAD P.O.,PIN-686 692.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM-682 031.**

R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHAN.

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 17-03-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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C.T.RAVIKUMAR, J

Crl.R.P No. 153 of 2015

Dated this the 17th day of March, 2015

ORDER

The revisionist is convicted under section 138 of the Negotiable Instruments Act. For the said conviction he was sentenced to undergo simple imprisonment for a period of 3 months and ordered to pay a compensation of ₹1,75,000/- to the complainant in C.C.No.152/2009 by the Court of the Judicial First Class Magistrate, Kothamangalam. Default clause was also incorporated. The petitioner preferred an appeal as Crl.A.No.167/2013 and the appellate court modified the substantive sentence but maintained the direction to pay compensation and reduced the default sentence. This revision petition is filed in the said circumstances against the judgment in Crl.A.No.167/2013.

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

3. The trial court considered the the oral testimony of the complainant as PW1 and Exts.P1 to P12 and also took note of the evidence of the revision petitioner as DW1 and Exts.D1 and D2 to come to the conclusion that the complainant/ the first respondent

has succeeded in establishing the commission of offence under section 138 of the N.I.Act by the revision petitioner Accordingly, he was convicted thereunder and sentenced as aforesaid. The appellate court considered the contentions taken up by the petitioner found that the oral testimony of PW1 with Exts.P1 to P12 were properly appreciated by the trial court to come to the conclusion that the complainant has succeeded in establishing the commission of the offence under section 138 of the N.I.Act conclusively against the revision petitioner. Thus, it is obvious that the courts below convicted the revision petitioner concurrently based on the evidence on record. In such circumstances, an interference in exercise of the revisional jurisdiction is possible only if the revision petitioner makes out a case of utter perverse appreciation of the evidence by the courts below or that the conclusions arrived at by the courts below are totally against the weight of evidence. True that, the interference is also possible in case the revision petitioner brings out an error in law committed by the courts below. In this case, the revision petitioner failed to make out any such case warranting interference by this Court in exercising the revisional jurisdiction. In the said circumstances I do not find any reason to interfere with the

conviction concurrently entered against the revision petitioner by the courts below and accordingly the conviction entered against the petitioner for the offence under section 138 of the N.I.Act is confirmed.

4. Evidently, for the conviction under section 138 of the N.I.Act the trial court convicted the petitioner to undergo simple imprisonment for a period of three months and to pay a compensation of Rs.1,75,000/- under section 357(3) of the Code of Criminal Procedure. The appellate court interfered with the substantive sentence and modified it as imprisonment till the rising of the court. The order to pay the compensation was maintained and in default of payment of compensation the revision petitioner was ordered to undergo simple imprisonment for a period of 60 days. The amount directed to be paid as compensation is the amount covered by the cheque in question. Ext.P1 cheque is dated 2.1.2009. In the said circumstances, I do not find any reason to interfere with the sentence imposed by the appellate court for the conviction under section 138 of the N.I.Act. In the result, the sentence imposed for the conviction under section 138 of the N.I.Act by the appellate court is also liable to be confirmed and accordingly,

it is confirmed. When this Court was about to dismiss this matter without any qualification the learned counsel for the revision petitioner submitted that some reasonable time may be granted to the revision petitioner to pay the amount of compensation. Taking note of the amount of compensation payable I am of the view that appropriate directions can be issued to the learned Magistrate. In the result, the learned Magistrate is directed to keep in abeyance the execution of the sentence as also steps to effect recovery of the amount of compensation for a period of five months, so as to enable the petitioner to deposit the amount of compensation and to appear before the trial court to suffer sentence of imprisonment till the rising of the court, within the above stipulated time. In case of failure on the part of the petitioner to effect payment of compensation and also to appear before the trial court to undergo imprisonment within the above stipulated time, the trial court shall take appropriate steps, in accordance with law, forthwith.

Subject to the above, this revision petition is dismissed.

Sd/-

C.T.RAVIKUMAR,JUDGE.