

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

Crl.Rev.Pet.No. 167 of 2015 ()  
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AGAINST THE JUDGMENT IN CRL.APPEAL NO. 248/2013 of ADDITIONAL DISTRICT  
& SESSIONS COURT,MOOVATTUPUZHA DATED 04-11-2014

AGAINST THE JUDGMENT IN ST NO. 1484/2011 of JUDICIAL FIRST CLASS  
MAGISTRATE COURT,KOLENCHERRY DATED 16-04-2013

REVISION PETITIONER(S)/APPELLANT/ACCUSED:  
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M.N.DEVADAS, AGED 61 YEARS  
S/O NARAYANAN, SHYAM NIVAS, NEAR S.H. SCHOOL  
PERUNNA PO, CHANGANASSERY, PIN-686102

BY ADV. SRI.SHAJI THANKAPPAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:  
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1. M.E.YUSUF, AGED ABOUT 51 YEARS  
MANAGING PARTNER, STAR EARTH MOVERS, KUMARAPURAM PO  
PALLIKKARA, KUNNATHUNADU VILLAGE,  
KUNNATHUNADU TALUK, PIN-683565

2. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR  
HIGH COURT OF KERALA

BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION  
ON 05-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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**C.T.RAVIKUMAR, J**

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**Crl.R.P. No.167 of 2015**  
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Dated this the 5<sup>th</sup> day of February, 2015

**ORDER**

This revision revision petition is filed against the conviction concurrently entered against the petitioner for the offence under section 138 of the Negotiable Instruments Act. In S.T.No.1484/2011 the learned magistrate found the petitioner guilty for the said offence and convicted him thereunder and sentenced him to undergo simple imprisonment for three months and to pay a fine of Rs. 2,34,000/-. The said amount on realisation, was directed to be paid as compensation to the complainant/the first respondent herein. In default of payment of fine the petitioner was directed to undergo simple imprisonment for two months. The petitioner filed Crl.A.No.248/2013 against the said judgment. The appellate court after considering the evidence on record found that the conviction entered against the petitioner by the trial court calls for no interference. Accordingly, the conviction of the petitioner under section 138 of the N.I.Act was confirmed. At the same time, taking into account the settled position that in a case of dishonour of cheque pecuniary aspect shall be given priority over the punitive aspect the

appellate court interfered with the sentence and modified it as imprisonment till the rising of the Court. The amount of fine imposed on the petitioner was also reduced from 2,34,000/- to 2,33,860/-. In default of payment of fine the petitioner was directed to undergo simple imprisonment for one month. The case of the complainant is that the accused is a contractor by profession and he hired a hydraulic excavator belonging to the firm of the complainant in connection with a work awarded to him. An amount of Rs.2,33,860/- fell due from the revision petitioner towards the hire charge of hydraulic excavator and it is to discharge the said legally enforceable liability that Ext.P2 cheque was issued. A perusal of the judgment of the courts below would reveal adherence with all the mandatory procedures. So also, the petitioner herein did not have a case that mandatory procedures under the statute were not followed by the complainant prior to the filing of the complaint. Having carefully considered the contentions raised by the revision petitioner I do not find any reason inviting an interference in exercise of revisional jurisdiction. Conviction concurrently entered by the courts below permits interference only on limited grounds. If the appreciation of the evidence by the courts below are shown to be utterly perverse or

against the weight of evidence or that the judgment is infected with any error of law an interference by invoking the revisional jurisdiction would be justified. The petitioner has not made out any such case. The conviction entered against the petitioner based on the evidence on record which consisted of the evidence of the oral testimony of the complainant as PW1 and documentary evidence as Exts.P1 to P7 is liable to be confirmed. In the circumstances, the conviction of the petitioner under section 138 of the N.I.Act is confirmed. Obviously, the trial court upon convicting the petitioner under section 138 of the N.I.Act sentenced him to undergo simple imprisonment for three months and to pay a fine of Rs.2,34,000/-. The appellate court while confirming the conviction modified the sentence to undergo imprisonment till rising of the court and the amount of fine was also reduced, as aforesaid. The amount covered by the cheque is now imposed as fine. I have already confirmed the conviction. I find no reason to hold that it is not the condign punishment for the conviction under section 138 of the N.I.Act to interfere with the sentence any further. In the said circumstances, the sentence imposed on the petitioner as per the impugned judgment also calls for no interference. When this Court was about to dismiss this

revision petition holding as aforesaid the learned counsel for the petitioner submitted that the petitioner may be granted some reasonable time to pay the amount of fine. In such circumstances, while confirming the conviction and the sentence imposed against the petitioner the learned magistrate is directed to keep in abeyance the execution of the sentence for a period of 4 months. Needless to say that in case the petitioner fails to pay the amount of fine within the above stipulated time appropriate steps shall be taken, in accordance with law. The petitioner shall appear before the trial court for suffering the sentence of imprisonment till raising of the court on 4.3.2015. It is submitted by the learned counsel for the petitioner that at the appellate stage the petitioner has deposited an amount of Rs.46,000/-. In case the petitioner has already effected the payment of Rs.46,000/-, it shall be given credit.

Subject to the above this revision petition is dismissed.

Sd/-

**C.T.RAVIKUMAR,JUDGE.**

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