

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

Crl.Rev.Pet.No. 172 of 2015 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 274/2013 of ADDITIONAL
SESSIONS COURT, KOTTAYAM DATED 23.10.2014

AGAINST THE JUDGMENT IN ST NO. 76/2012 of JUDICIAL FIRST CLASS
MAGISTRATE COURT-III, KANJIRAPPALLY DATED 18.6.2013

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

K.RAMACHANDRAN
MANAIMALAYIL (KARUNYAM) VEEDU, PAZHAVEEDU VILLAGE
AMBALAPPUZHA TALUK, ALAPPUZHA DISTRICT

BY ADV. SRI.C.A.ANOOP

RESPONDENT(S)/RESPONDENTS/COMPLAINANTS:

1. GEETHA PRADEEP
W/O.K.P.PRADEEP, SANTHINIKETHAN HOUSE, CHERUVALLY P.O.
CHERUVALLY KARA, CHERUVALLY VILLAGE
KANJIRAPPALLY TALUK - 686 593.
2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 23-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

dlk

C.T.RAVIKUMAR, J

Crl.R.P. No.172 of 2015

Dated this the 23rd day of February, 2015

ORDER

This revision petition is directed against the conviction concurrently entered against the petitioner for an offence under section 138 of the Negotiable Instruments Act. The petitioner was the accused in S.T.No.76/2012 on the files of the court of the Judicial First Class Magistrate-III, Kanjirappilly. The first respondent herein was the complainant therein. The case of the complainant was that on 22.04.2011 the accused borrowed an amount of Rs.1,50,000/- from her with the promise to return the same within one month. Earlier, she repaid an amount of Rs.45,000/- through bank. On 28.07.2011 the accused came to her house and issued Ext.P1 cheque dated 28.07.2011 covering the balance amount viz., 1,05,000/-. The said cheque on its presentation for encashment was dishonoured on the ground of 'insufficiency of fund'. Thereupon, the complainant issued statutory notice within the statutorily prescribed time limit intimating the

revision petitioner against the dishonour of the cheque and calling upon him to pay the amount due. It is the failure on the part of the petitioner to pay the amount within the statutorily prescribed period that constrained the first respondent to file a complaint which was taken into file and registered as S.T.No.72/2012. On due process the petitioner appeared before the trial court. The particulars of the offences were read over and explained to him and he pleaded not guilty. To bring home the charge against the revision petitioner the complainant got herself examined as PW1 and got marked Exts.P1 to P6. On the closure of the evidence of the complainant the petitioner was examined under section 313 of the Code of Criminal Procedure and the petitioner denied all the incriminating circumstances put to him. The revision petitioner got himself examined as DW1 and got examined one Salim P.K. as DW2. Ext.D1 was marked on his side. After evaluation of the evidence the trial court found that the complainant has succeeded in establishing the commission of the offence under section 138 of the N.I.Act by the revision petitioner and consequently, convicted him thereunder and sentenced him to undergo simple imprisonment for a period of three months and he was directed to pay an amount of Rs.1,05,000/- with 9% interest from 28.7.2011

till realisation. In default of payment of fine the petitioner was directed to undergo simple imprisonment for 4 months. Feeling aggrieved by the same the petitioner filed Crl. Appeal No.274/2013. Though the petitioner raised manifold contentions to mount challenge against the said judgment the appellate court found no merits in such contentions and confirmed the conviction. However, the appellate court interfered with the sentence imposed by the trial court for the conviction under section 138 N.I.Act. Consequently, while confirming the conviction the substantive sentence was set aside, the petitioner was sentenced to pay a fine of Rs.1,33,000/- and in default of payment of the said fine amount he was directed to undergo simple imprisonment for a period of 2 months. 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 is filed against the said judgment.

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

3. Virtually, the revision petitioner reiterated the contentions raised unsuccessfully before the appellate court. Evidently, the case of the petitioner is that he did not owe any amount as alleged and in fact, the transaction was only to the tune

of Rs.1,30,000/- and he had paid Rs.45,000/- to discharge the said liability. The courts below considered the question whether the first respondent has succeeded in establishing the fact that the cheque in question was issued in discharge of a legally enforceable debt. The courts below concurrently found, on appreciation of the evidence on record that the complainant has succeeded in establishing commission of the offence under section 138, N.I.Act by the revision petitioner, conclusively. The judgment of the courts below would reveal that despite the lengthy cross examination nothing was elicited from the complainant, who was examined as PW1 to discredit her version. It is the precise case of the first respondent that the petitioner borrowed an amount of Rs.1,50,000/- and when he was called upon for repayment of the same he paid an amount of Rs.45,000/- and thereafter issued the cheque in question for the balance amount. After a careful consideration of the evidence, the courts below found that the first respondent is entitled to get the benefit of the statutory presumption under section 139 of the N.I.Act and the evidence adduced by the complainant while being examined as DW1 and the evidence tendered through DW2 are not sufficient to dislodge the presumption available under section 139 of the N.I.Act. The

appellate court on proper appreciation of the evidence arrived at the conclusion that the first respondent convincingly explained the circumstances under which she got Ext.P1 cheque. At the same time, it was found that the revision petitioner got no reasonable or probable explanation as to how it reached the hands of the first respondent from him. The evidence on record was appreciated by the courts below in the light of the decisions on the subject, to come to the conclusion that the first respondent has succeeded in establishing all the ingredients of the offence under section 138, N.I.Act against the revision petitioner. The appellate court evidently considered the contentions of the revision petitioner herein carefully, as is obvious from the impugned judgment. There cannot be any doubt with respect to the position that in a case where the courts below concurrently convicted a person under section 138 N.I.Act to make this Court to invoke the revisional jurisdiction the revision petitioner has to make out a case that the appreciation of evidence by the courts below are utterly perverse or that the conclusions arrived at based on the evidence are totally against the weight of the evidence. The petitioner has failed to make out any such case. The revision petitioner has also failed to bring out any error in law. In such circumstances, I have no hesitation to hold

that the petitioner has failed to make out a case for invocation of the revisional jurisdiction. In the result the conviction concurrently entered against the petitioner for the offence under section 138 of the N.I.Act is only to be confirmed and accordingly, it is confirmed.

4. Evidently, upon convicting the petitioner under section 138 of the N.I.Act the trial court sentenced him as noted hereinbefore. However, the appellate court set aside the substantive sentence imposed against the petitioner to undergo simple imprisonment for three months. Presumably, considering the fact that the cheque in question is for an amount of Rs.1,05,000/- and the cheque in question is dated 27.11.2012 the appellate court found that a sentence to pay a fine of ₹1,33,000/- would be the condign punishment. In default of payment of said amount of fine the petitioner was directed to undergo simple imprisonment for a period of two months. The said amount of fine was also directed to be paid as compensation to the first respondent under section 357 (1) Cr.P.C I am of the considered view that the said sentence imposed by the appellate court for the conviction under section 138 of the N.I.Act is certainly the condign sentence for the conviction thereunder and a further interference with the sentence is uncalled for in the facts and circumstances. In

otherwords, the sentence imposed against the petitioner for the offence under section 138 of the N.I.Act is also liable to be confirmed. When this Court was about to dismiss this revision petition without any qualification the learned counsel appearing for the petitioner submitted that some reasonable time may be granted to the petitioner. Having regard to the submissions, the learned magistrate is directed to keep in abeyance the execution of the sentence for a period of four months to enable the petitioner to deposit the said amount of fine before the trial court. Ordered accordingly. Needless to say that in case of default on the part of the petitioner to pay the amount of fine within the above stipulated time the trial court shall take appropriate steps, in accordance with law.

Subject to the above this revision petition is dismissed.

Sd/-

C.T.RAVIKUMAR,JUDGE.

dlk