

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

Crl.Rev.Pet.No. 177 of 2015 ()

(AGAINST THE JUDGMENT IN CRL.A.NO. 198/2011 OF ADDL.SESIONS COURT-II,
THIRUVANANTHAPURAM DATED 18-08-2014)

(AGAINST THE JUDGMENT IN ST.NO. 522/2006 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT -II, VARKALA DATED 26-03-2011)

REVISION PETITIONER/APPELLANT/ACCUSED:

JAGENDRADEVAN,S/O.MADHAVAN,AGED 61 YEARS,
PARAMBILTHITTA VEEDU,KADAKKAVOOR P.O.,
THIRUVANANTHAPURAM.

BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT/STATE:

1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 052

2. SUGATHAN, S/O.BALAKRISHNAN,
PUTHENVEEDU, NEAR SBT, KADAKKAVOOR P.O.,
THIRUVANANTHAPURAM.

R1 BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN
R2 BY ADV. SRI.M.SREEKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 09-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

sts

C.T.RAVIKUMAR, J

Crl.R.P.No. 177 of 2015

Dated this the 9th day of February, 2015

ORDER

This revision petition is directed against the judgment in Crl.A.No.198 of 2011 on the files of the Court of the Additional Sessions Judge-II, Thiruvananthapuram confirming the conviction and modifying the sentence imposed in S.T.No.522 of 2006 on the files of the Court of the Judicial First Class Magistrate-II, Varkala. The petitioner was tried for an offence under section 138 of the Negotiable Instruments Act. The case of the second respondent is that the revision petitioner borrowed an amount of Rs. 3,00,000/- and in discharge of the said legally enforceable debt issued Ext.P1 cheque dated 01.07.2005 drawn on S B T, Kadakkavoor Branch in favour of the complainant. The said cheque on its presentation was dishonoured on the ground of 'funds insufficient' in the account of the accused. Thereupon, the second respondent issued statutory notice to the petitioner herein intimating him regarding the dishonour of the cheque and calling upon him to pay the amount due. Upon the failure on the part of the petitioner to pay the

amount due the complaint was filed and it was registered and taken on file as S.T.522 of 2006. On due process the revision petitioner entered appearance and the particulars of offences were read over and explained to him and he pleaded not guilty. To prove the charge against the revision petitioner the second respondent got examined himself as PW1 and 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 all the incriminating circumstances were put to him and he denied all the incriminating circumstances. Upon evaluation of the evidence the trial court found that the second respondent has succeeded in proving the commission of 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 three months. He was also directed to pay a compensation of Rs.3,15,000/- and in default of payment of compensation to undergo simple imprisonment for a further period of one month. Aggrieved by the same the petitioner preferred Crl.A.No.198/2011. The revision petitioner took up the contention that the defence set up by him was not properly appreciated by the trial court and

findings of the trial court are not supported by evidence. After considering the contentions, the appellate court found that the conclusions and findings of the trial court based on the evidence on records require no appellate interference. It is also found that the second respondent has succeeded in establishing the commission of the offence under section 138 of the N.I.Act. in the said circumstances, the appellate court confirmed the conviction. At the same time, taking note of the settled position that in a case of dishonour of cheque the pecuniary aspects has to be given priority over the punitive aspects the appellate court interfered with the sentence and modified the substantive sentence to imprisonment till the rising of the court. He was also sentenced to pay a fine of ₹ 3,00,000/- and, if realised, the said amount was directed to be paid to the complainant, as compensation under Section 357(1), Cr.P.C. In case of failure to pay the amount of fine, the revision petitioner was directed to undergo simple imprisonment for a period of three months. The captioned revision petitioner is filed against the said judgment.

2. I have heard the learned counsel for the petitioner.

3. Virtually, the petitioner has reiterated the contentions

raised before the appellate court unsuccessfully, in this revision petition. The contention of the petitioner is that the cheque in question was issued by him as a security in a transaction with M/s. Reliant Finance. The courts below considered the said aspects and found that though the revision petitioner took up the contention at the time of his examination under section 313 Cr.P.C he has not produced any evidence in support of that. It is in that context that the failure on the part of the petitioner to respond to the lawyer notice was also seriously note of. True that, the standard of proof required on the part of an accused in a criminal proceedings is lesser than the standard of proof required from the part of the prosecution. In the case of an accused, standard of proof required is preponderance of probabilities and that it could also be drawn from the materials brought on record by the parties whilst the prosecution must prove the guilt of the accused beyond all reasonable doubt. True that, the petitioner during his examination under section 313 Cr.P.C pleaded that the cheque in question was issued as a security while obtaining a loan. There is absolute absence of any evidence in that regard and the petitioner has also not entitled to get any inference in her favour from evidence adduced before the Court. It

is in this context that the lapse on the part of the petitioner to respond to the notice was taken seriously by the courts below. True that, the failure to respond to a statutory notice under the N.I.Act by itself is not a ground for discarding the version of an accused. But, at the same time, the circumstances involved in this case are not capable of drawing presumption in favour of the revision petitioner/accused. In short, after hearing the learned counsel for the petitioner I am of the view that the petitioner has failed to make out a case compelling this Court to invoke the revisional jurisdiction against the concurrent finding of conviction entered against the revision petitioner by the courts below. There cannot be any doubt with respect to the position that when conviction was entered into concurrently against the accused to make this Court to invite the revisional jurisdiction the revision petitioner has to make out a case of utter, perverse appreciation of evidence by the courts below or that findings of the courts below are totally against the weight of evidence. Having heard the learned counsel for the petitioner and perusing the judgment of the courts below I am of the considered view that the revision petitioner has failed to make out any case warranting interference in exercise of the revisional jurisdiction. No

error in law was brought to my notice. In the result, the conviction entered against the petitioner concurrently by the courts below under section 138 of the N.I.Act is not liable to be interfered with and accordingly it is confirmed.

4. Evidently, upon conviction under section 138 of the N.I.Act the trial court sentenced the revision petitioner to undergo simple imprisonment for three months besides directing him to pay a compensation of Rs.3,15,000/- with a default clause. As noticed hereinbefore, the appellate court modified the substantive sentence imposed on the petitioner as imprisonment till rising of the court and the direction to pay compensation was also modified. He was sentenced to pay a fine of Rs.3,00,000/- and the same, if realised, was directed to be given as compensation to the complainant under section 357(1), Cr.P.C. In default of payment of fine he was directed to undergo simple imprisonment for a period of three months. The amount directed to be imposed as fine is the amount covered by Ext.P1 cheque and the cheque is dated 28.8.2008. In the said circumstances, I do not find any reason to interfere with the sentence imposed by the courts below for the conviction under section 138 of the N.I.Act and accordingly, it is also confirmed.

When faced with such a situation the learned counsel submitted that some reasonable time may be granted to the petitioner to pay the fine amount. Taking into account the said submission made by the learned counsel for the petitioner 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. It is made clear that in case of failure on the part of the petitioner to pay the said amount of fine and to appear before the trial court to suffer the sentence of imprisonment till the rising of the court, within the above stipulated time, the learned Magistrate shall take appropriate steps, to execute the sentence, forthwith.

Subject to the above this revision petition is dismissed.

Sd/-

C.T.RAVIKUMAR,JUDGE.

dlk