

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

Cr1.Rev.Pet.No. 3519 of 2007 ()

AGAINST THE JUDGMENT IN CRA 492/2005 of I Addl.Sessions Court,
THRISSUR DATED 16-03-2007

AGAINST THE JUDGMENT IN CC 902/2002 of J.M.F.C.-III, THRISSUR DATED
31-05-2005

REVISION PETITIONER/IST RESPONDENT/COMPLAINANT:

SEETHA K.MOORTHY, PROPRIETRIX,
M/S.VIVEK & VINEETH, TC 36/282, GEETHA
KOTTAPPURAM, THRISSUR.

BY ADV. SRI.K.G.BALASUBRAMANIAN

RESPONDENT(S)/APPELLANT/ACCUSED:

1. M.CHANDRAN, S/O.MANIKKAN, C/O.MANI,
KALLIKKADAVIL HOUSE, MOOTHRATHIKKARA
P.O. PARAPPUKKARA, THRISSUR DT.

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

R, BY ADV. PUBLIC PROSECUTOR SRI DHANESH MATHEW MANJOORAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 30-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.D.RAJAN, J

.....
Crl.R.P.No.3519 of 2007
.....

Dated 30th September, 2015

ORDER

'CR'

The revision petitioner who is the first respondent/complainant in Crl.A.492 of 2005 on the file of Sessions Court, Thrissur challenges the concurrent finding of conviction under Section 138 of Negotiable Instruments Act(hereinafter referred to as the 'N.I.Act'). He was the complainant in C.C.902 of 2002 on the file of Judicial First Class Magistrate III, Thrissur which was filed under Section 138 of N.I.Act. The accused is the first respondent in this revision petition and he was convicted by the trial court under Section 138 of the N.I.Act, and sentenced to imprisonment till rising of court and to pay compensation of Rs.1,30,000/- under Section 357(3) Cr.P.C and in default of payment of compensation, simple imprisonment for six months.

2. The revision petitioner's case in the trial court was that first respondent issued a cheque for Rs.2,46,497.90 to the complainant drawn on Bank of India, Nandikkara branch. When it was presented for encashment through IOB, Thrissur Branch, it was dishonoured for the reason of funds insufficient. The complainant gave a notice in writing to the accused and

demanded the due amount. There was no repayment, even after receipt of notice. In the circumstance, he filed the above complaint in the Judicial First Class Magistrate III, Thrissur.

3. During trial, revision petitioner examined PW1 and PW2. His documents were marked as Ext.P1 to P15. The incriminating circumstances brought out in evidence were denied by the accused/first respondent while questioning him. He examined DW1 as defence witness. Trial court after analysing the oral and documentary evidence, convicted the first respondent under Section 138 of the N.I.Act and sentenced him. Against that, he preferred Crl.A.492 of 2005, wherein the conviction passed by the trial court was confirmed and the sentence was modified to imprisonment till rising of court and to pay compensation of Rs.1,33,000/- under Section 357(3) Cr.P.C and in default of payment of compensation, simple imprisonment for two months. Being aggrieved by that, the defacto complainant preferred this revision petition to enhance the sentence.

4. The learned counsel appearing for the revision petitioner contended that the appellate court altered the default sentence which is illegal and unsustainable and the

sentence passed by the trial court is perfectly legal and sustainable. Therefore that error is to be rectified by invoking the revisional jurisdiction.

5. The revisional power on the High Court is provided under Section 401 Cr.P.C as a general supervision in order to correct the illegality or irregularity or impropriety of any of the findings or orders of inferior courts. Any error may arise from the misconception of law or facts, irregularity of procedure or misreading of evidence. It is the responsibility of the higher courts to rectify such defect or an error invoking revisional jurisdiction which is discretionary one and there is no vested right of revision, when there is a right in appeal.

6. According to Section 401 Cr.P.C by High Court, the powers of appellate court explained under Section 386, 389, 390 and 391 of the Cr.P.C is exercisable. In **Nadir Khan V. State (Delhi)** (1975) 2 SCC 406) Apex court held that :

“Section 401 read with Section 386(c)(iii) confers a power on the High Court to enhance the sentence in appropriate cases while exercising the powers of revision.”

41st Law Commission report page 264 para 31.21 observed as follows:-

“However Section 386(c)(iii) is linked up with Section 377; and sub-section (3) of Section 377 requires that the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for reduction of the sentence.”

Therefore it is necessary that when the question of enhancement of the sentence comes before the revisional court either in the High Court or in the court of sessions, the right of the accused to be heard will be the same as given by sub-section (3) of Section 377. This right of the accused under Section 377(3) and Section 401(2) is not affected by the dismissal of his appeal earlier and there is nothing in the Code to control this right.

7. Apex Court in **UJS Chopra V. State of Bombay** (AIR 1955 SC 633) observed that the principle of finality of judgments of appellate courts cannot be invoked against the abovesaid right of the accused because Section 393 itself says that its operation shall not affect the provisions of Section 377 or the provisions of Chapter XXX of the Code dealing with revision.

This court cannot enhance the sentence unless the

accused had been given an opportunity of showing such cause. I find no illegality in the findings of the court below and no reason to interfere with those findings. There is no merit in this revision petition and it is dismissed accordingly.

P.D.RAJAN, JUDGE

lgk