

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

Crl.Rev.Pet.No. 1381 of 2010 ()

AGAINST THE JUDGMENT IN CRA 709/2008 of I ADDL.SESIONS
COURT,PALAKKAD DATED 23-12-2009

AGAINST THE JUDGMENT IN ST 2141/2007 of J.M.F.C.-III,
PALAKKAD DATED 30-10-2008

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

P.K.SIVADAS, S/O.ECHUNNI MENON,
AGED 57 YEARS, ELAPPULLY, PARA
PALAKKAD DISTRICT.

BY ADV. SRI.RAJESH SIVARAMANKUTTY

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE::

1. K.SREENIVASAN, S/O.VELU,
AGED 50 YEARS, RAILWAY QUARTERS, HEMAMBIKA NAGAR POST
PALAKKAD.
2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.K.R.VINOD

ADV. SMT.M.S.LETHA

BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 19-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ami/

V.K.MOHANAN, J.

Crl.R.P.No.1381 of 2010

Dated this the 19th day of February, 2015.

O R D E R

Challenging the concurrent findings of the court below, the accused in a prosecution for the offence punishable under section 138 of the Negotiable Instruments Act preferred the above revision petition.

2. The case of the complainant is that the revision petitioner borrowed a sum of Rs.95,000/- from the complainant and towards the discharge of the said liability, the accused issued Ext.P1 cheque dated 2.5.2007 for an amount of Rs.95,000/-. During the trial of the case, the complainant was examined as PW1 and Exts.P1 to P6 were marked from his side. No evidence whatsoever adduced from the side of the defence. The trial court finally found that the revision petitioner/accused is guilty of the offence under section 138 of the NI Act. Accordingly, he was

convicted for the same and sentenced to pay fine of Rs.95,000/- and in default to undergo simple imprisonment for one month. It was also ordered that, if the fine amount is realised, the same shall be given to the complainant. Aggrieved by the above order of conviction and sentence, the accused preferred Crl.A.No.709/08 before the Sessions court, Palakkad, and by judgment dated 22.12.2009, the lower appellate court dismissed the appeal confirming the conviction and sentence imposed on him by the trial court. It is against the above order of conviction and sentence, the accused therein preferred this revision petition.

3. Heard the learned counsel for the revision petitioner and the respondents.

4. The learned counsel for the revision petitioner submitted that he has no contention on merit and he is ready to pay the amount within 7 months from today and requested that the revision petition may be disposed of accordingly.

5. As no contention on merit is advanced before me, this Court is not going to examine the correctness or legality of the orders impugned in this revision petition. The only request made by the learned counsel for the revision petitioner is that the revision petitioner may be granted 7 months time to pay the amount. Though this Court is inclined to grant some time, the interest of the complainant has also to be protected. At this juncture, it is relevant to note that even according to the complainant, the amount of Rs.95,000/- was borrowed by the revision petitioner much prior to 2.5.2007 and Ext.P1 cheque was issued on 2.5.2007 for Rs.95,000/-. Both the courts below concurrently found that the allegation raised against the revision petitioner is correct and accordingly he is found guilty and convicted thereunder. After issuing the cheque on 2.5.2007, now more than 8 years are over. Therefore, the complainant should be compensated adequately. So, while considering the request of the petitioner to grant time, the amount fixed by the court below has to be

enhanced and 3 months' time can be granted to the revision petitioner to pay the amount to be fixed by this Court.

In the result, this revision petition is disposed of confirming the findings of the trial court as well as the lower appellate court and the conviction recorded against the revision petitioner. At the very same time, the amount of fine fixed by the trial court and confirmed by the lower appellate court is modified and enhanced to Rs.1,40,865/- and accordingly, the sentence of fine is modified and the revision petitioner is sentenced to pay fine of Rs.1,40,865/- which shall be paid within 3 months from today. In case the petitioner fails to pay the said amount within the above stipulated time, the petitioner is directed to undergo simple imprisonment for 6 months. It is made clear that the enhanced fine amount shall be deposited in the trial court and the same shall not be paid directly to the respondent/complainant. On realisation of the fine amount, the court below is directed to pay a sum of Rs.1,35,865/- as

compensation to the complainant under section 357(1)(b) of Cr.P.C. and the remaining amount of Rs.5,000/- shall be deposited in the State Exchequer. Accordingly, the revision petitioner is directed to appear before the trial court on **19.5.2015** to receive the default sentence, in case, he fails to deposit the fine amount on or before the above fixed date.

Sd/-
V.K.MOHANAN,
Judge.

ami/

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P.A.to Judge