

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

Crl.Rev.Pet.No. 193 of 2015 ()

AGAINST THE JUDGMENT IN CRA 375/2011 of COURT OF ADDL. SESSIONS
JUDGE-II, PALAKKAD DATED 01-01-2014

AGAINST THE JUDGMENT IN ST 2449/2009 of J.M.F.C.-I, PALAKKAD DATED
18-07-2011

REVISION PETITIONER/APPELLANT/ACCUSED:

RAJAN K
S/O.KRISHNAN CHETTIAR, ABI NIVAS, KILLIKKAVU
MANISSE POST, OTTAPPALAM, PALAKKAD DISTRICT.

BY ADVS.SRI.A.R.GANGADAS
SRI.M.L.SURESH KUMAR

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

1. SREE GOKULAM CHITT & FINANCE CO. (P) LTD.
SANJOES TOWER OPP.KSRTC, PALAKKAD
REPRESENTED BY LEGAL CLERK, K.K.SUBASHKUMAR
S/O.KRISHNAN, PULINELL, PALAKKAD - 678 014.

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA - 683 031.

R1 BY ADV. SRI.MAHESH V RAMAKRISHNAN
R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 11-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.R.P.No.193 of 2015

Dated 11th February, 2015

ORDER

This revision petition is directed against the judgment in Crl.A.No.375 of 2011 of the Court of Additional Sessions Judge-II, Palakkad confirming the conviction and modifying the sentence imposed on the petitioner in S.T.No.2449 of 2009 of the Court of Judicial First Class Magistrate-I, Palakkad. The petitioner was tried for the offence punishable under Section 138 of the Negotiable Instruments Act. The allegation of the first respondent/complainant is that the petitioner subscribed chitty No.G3C/0536/JMM/03 conducted by the complainant company having a total value of ₹ 30,000/-. The petitioner auctioned the chit and received the prized amount. Later, the petitioner committed default in repayment of the chitty transaction and an amount of ₹ 24,527/- fell due. When the complainant demanded the balance amount he issued Ext.P1 cheque for the said amount. But, on presentation for encashment the said cheque was dishonoured due to insufficiency of fund in the account maintained by the revision petitioner. Thereupon, the complainant issued a notice intimating the revision petitioner of the dishonour of the cheque and calling upon him

to make payment of the amount due but, the petitioner did not pay the amount. It is the failure on the part of the petitioner to effect payment within the statutorily prescribed period that constrained the complainant to file the complaint which was taken on file by the Court of Chief Judicial Magistrate, Palakkad and registered as S.T.No.634 of 2009. Thereafter, the case has been made over to the Court of Judicial First Class Magistrate-I, Palakkad and was re-numbered as S.T.No.2449 of 2009. On due process the petitioner appeared before the court through counsel and the personal attendance of the accused was dispensed with and later, the copies of the relevant records were furnished to the counsel. Subsequently, the particulars of the charge were read over and explained to the counsel. Upon pleading not guilty the learned counsel wanted the petitioner to be tried. On the side of the complainant Mr.Subashkumar, the Legal Clerk of the complainant company was examined as PW1 and Exts.P1 to P7 were got marked. On closure of the evidence of the complainant the case was posted for examination of the petitioner under Section 313 Cr.P.C. but, he did not appear and hence the examination of the petitioner under the proviso to Section 313 Cr.P.C. was dispensed with. No defence evidence was adduced. On a careful 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

Negotiable Instruments Act by the petitioner. Consequently, he was convicted thereunder and sentenced to undergo imprisonment till rising of the court and he was also directed to pay an amount of ₹ 24,527/- as compensation to the complainant under Section 357(3) Cr.P.C. and in default of payment of compensation to undergo simple imprisonment for two months. The petitioner filed Crl.A.No.375 of 2011 before the Court of Additional Sessions Judge-II, Palakkad against the said judgment. Though various contentions were raised against the judgment of the trial court the learned Additional Sessions Judge found no ground to invoke the appellate jurisdiction. It was found that the conclusions and findings of the trial court are perfectly in tune with the evidence on record. While the case was pending the petitioner deposited an amount of ₹ 10,000/- before the Court. In the said circumstances, the appellate court confirmed the conviction but, at the same time, modified the sentence. The sentence to undergo imprisonment till the rising of the court was confirmed and the petitioner was also sentenced to pay a fine of ₹ 15,000/- and in default of payment of fine he was directed to undergo simple imprisonment for a period of two months. Out of the amount of fine, on realisation, ₹ 14,527/- was directed to be paid to the complainant as compensation under Section 357(1)(b), Cr.P.C. The captioned revision petition has been filed against the said judgment confirming the convicting and modifying the sentence as aforesaid.

2. I have heard the learned counsel on both sides.

3. As noticed hereinbefore, concurrent conviction was entered against the petitioner and the sentence imposed against the petitioner by the trial court was modified by the appellate court. In such circumstances, a further interference by exercising the revisional jurisdiction is called for only if the petitioner succeeds in establishing a case of utter perverse appreciation of evidence or that the conclusions arrived at are against the weight of the evidence or such other sustainable grounds. Having carefully gone through the pleadings in this revision petition and also after hearing the learned counsel for the petitioner I have no hesitation to hold that no such grounds were brought out by the petitioner so as to compel this Court to invoke the revisional jurisdiction to interfere with the concurrent finding of conviction entered against him. Virtually, the petitioner took up the contentions unsuccessfully raised before the appellate court. In the said circumstances, the conviction entered concurrently against the petitioner under Section 138 of the Negotiable Instruments Act is liable to be confirmed.

4. Obviously, the trial court sentenced the petitioner to

undergo simple imprisonment till the rising of the court. The revision petitioner was also directed to pay a compensation of ₹ 24,527/- under Section 357(3) Cr.P.C. and in default of payment of compensation to undergo simple imprisonment for two months. At the appellate stage the petitioner has deposited an amount of ₹ 10,000/-. After careful evaluation of the evidence on record and such circumstances the appellate court interfered with the sentence and modified it. While confirming the substantive sentence of imprisonment till the rising of the court the appellate court also sentenced the petitioner to pay a fine of ₹ 15,000/- and in default of payment he was directed to undergo simple imprisonment for two months. On realization of the fine amount an amount of ₹ 14,527/- was directed to be paid to the complainant as compensation under Section 357(1)(b) Cr.P.C. I do not find any reason whatsoever to interfere with the sentence imposed by the trial court which was modified by the appellate court and I think it is the condign punishment for the conviction. Hence, it is also liable to be confirmed. When this Court was about to dismiss the revision petition without any qualification the learned counsel for the petitioner submitted that some reasonable time may be granted to the petitioner to effect payment of the amount of fine. In the circumstances, the learned Magistrate is directed to keep in abeyance execution of the sentence of payment of fine till 31.3.2015 so as to enable the petitioner to pay the same within

the stipulated time. In case of failure on the part of the petitioner to pay the amount of fine within the above stipulated time and to appear before the trial court to undergo the imprisonment till the rising of the court 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

TKS