

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. 194 of 2015 ()

AGAINST THE JUDGMENT IN CRA 274/2013 OF THE COURT OF III ADDL.
SESSIONS JUDGE, PALAKKAD DATED 06-05-2014

AGAINST THE JUDGMENT IN ST 1951/2012 of THE COURT OF JUDICIAL FIRST
CLASS MAGISTRATE-I, PALAKKAD DATED 29-07-2013

REVISION PETITIONER/APPELLANT/ACCUSED:

SUBHASH
S/O. KESAVAN, VADAKKEKAD, KUNNACHI
ELAPPULLY, PALAKKAD.

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

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

1. SREEKANTH
S/O. RAJAKRISHNAN, HARIKRISHNA HOUSE, KUNNACHI
ELAPPULLY, PALAKKAD-678 622.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA - 682 031.

R1 BY ADV. SRI.RAJESH SIVARAMANKUTTY
R2 BY PUBLIC PROSECUTOR SRI.N.SURESH

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.194 of 2015

Dated 11th February, 2015

ORDER

This revision petition is directed against the judgment in Crl.A.No.274 of 2013 of the Court of III Additional Sessions Judge, Palakkad confirming the conviction and modifying the sentence imposed on the petitioner in S.T.No.1951 of 2012 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 borrowed an amount of ₹ 1,50,000/- from him and in discharge of the said legally enforceable debt he issued Ext.P1 cheque. 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 pay the amount due, within the statutorily prescribed period. But, the petitioner did not pay the same. 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 and numbered as S.T.No.1951 of 2012. On due process the

petitioner appeared before the court and the particulars of the charge were read over and explained to him and the petitioner pleaded not guilty. The complainant got himself examined as PW1 and Exts.P1 to P4 were got marked. On closure of the evidence of the complainant the petitioner herein was examined under Section 313, Cr.P.C. and he denied all the incriminating circumstances put to him. However, no defence evidence was adduced. On a careful evaluation of the evidence the trial court found that the complainant has succeeded in establishing the fact that the petitioner herein has committed the offence under Section 138 of the Negotiable Instruments Act. Consequently, he was convicted thereunder and sentenced to undergo simple imprisonment for a period of three months. He was also directed to pay an amount of ₹ 1,50,000/- as compensation to the complainant under Section 357(3) Cr.P.C. and in default of payment of compensation to undergo simple imprisonment for a further period of 30 days. The petitioner took up the matter in appeal as Crl.A.No.274 of 2013 before the Court of III Additional Sessions Judge, Palakkad. Various contentions were raised against the judgment of the trial court. However, the learned Additional Sessions Judge found them meritless and it was found that the conclusions and findings of the trial court are perfectly in tune with the evidence adduced. In the said circumstances the appellate court confirmed the conviction but, at the same time, modified the sentence. The substantive sentence was

reduced to simple imprisonment for one month. The compensation awarded was confirmed. The captioned revision petition has been filed against the said judgment confirming the conviction and modifying the sentence as aforesaid.

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

3. As noticed hereinbefore, the trial court upon conviction of the petitioner under Section 138 of the Negotiable Instruments Act sentenced him as aforesaid. Compensation and default sentence was also awarded. The appellate court after considering the rival contentions found no scope for interfering with the conviction. Evidently, the evidence of the complainant as PW1 with Exts.P1 to P4 were considered in detail by both the courts. It is such consideration that constrained the courts below to enter into the conviction against the petitioner. The petitioner could not bring out a case warranting exercise of revisional jurisdiction. If it is found that the conviction concurrently entered against the revision petitioner could not be said as an outcome of an utter perverse appreciation of evidence or that the conclusions arrived at were against the weight of evidence there will not be any scope for interfering with the conviction. On perusing the judgments of the courts below and on hearing the contentions raised by the revision petitioner I have no

hesitation to hold that the revision petitioner could not bring out any such circumstances warranting interference with the conviction concurrently entered against him. In the circumstances, the conviction of the revision petitioner under Section 138 of N.I. Act is liable to be confirmed and accordingly, it is confirmed. However, the appellate court considered the circumstances appropriately to see the adequacy or otherwise of the sentence imposed for the conviction and found that the sentence imposed on the petitioner requires a modification and accordingly, modified the substantive sentence to simple imprisonment for a period of one month. The direction to pay the compensation of ₹ 1,50,000/- to the complainant under Section 357(3) Cr.P.C. and the direction to undergo simple imprisonment for 30 days in default of payment of compensation were retained. The question to be decided is whether there is any further scope for interfering with the sentence imposed by the appellate court after modifying the sentence imposed by the trial court. The learned counsel for the petitioner submitted that the petitioner is prepared to effect the payment of compensation as directed by the courts below and seeks only some reasonable time to effect the payment. It is also submitted that the petitioner would effect payment of the amount of compensation within a period of two months. In such circumstances the punitive aspect cannot be given priority over the pecuniary aspect and I am of the view that interest of justice requires a

further modification of the substantive sentence. In the result, the sentence imposed by the appellate court for the conviction under Section 138 of the Negotiable Instruments Act to undergo simple imprisonment for one month is set aside and the petitioner is sentenced to undergo imprisonment till the rising of the court for the conviction under Section 138 of the Negotiable Instruments Act. The direction of the appellate court to pay an amount of ₹ 1,50,000/- to the first respondent/complainant as compensation under Section 357(3) Cr.P.C. is confirmed and the petitioner is directed to pay the said amount within a period of two months. The petitioner shall undergo the imprisonment till the rising of the court on the date on which he deposits the compensation amount. Till such time the learned Magistrate is directed to keep in abeyance execution of sentence. Needless to say that in case of failure of the petitioner to deposit the amount of compensation and to appear to undergo the imprisonment till the rising of the court within the above stipulated time the trial court shall take appropriate steps, in accordance with law, for its execution.

Subject to the above, this revision petition is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS