

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

Crl.Rev.Pet.No. 3546 of 2007 ()

AGAINST THE JUDGMENT IN CRA 81/2007 of III ADDL.SESIONS JUDGE, KOLLAM
DATED 20-08-2007

AGAINST THE JUDGMENT IN CC 641/2003 of JUDICIAL FIRST CLASS
MAGISTRATE, SASTHAMCOTTA DATED 18-01-2007

REVISION PETITIONER/APPELLANT:

MR.JAMES, S/O MANUAL
JINU NIVAS, MANAKKARA,
SASTHAMCOTTA VILLAGE
KOLLAM.

BY ADVS.SRI.V.JAYAPRADEEP
SMT.GISA SUSAN THOMAS

RESPONDENTS/COMPLAINANT & STATE:

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1. MR.MOHANACHANDRAN NAIR,
LEKSHMI NIVAS, MANAKKARA,
SASTHAMCOTTA VILLAGE
KOLLAM.
 2. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR.

R1 BY ADV. SRI.P.B.SURESH KUMAR
R2 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 24-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.Rev.Pet.No. 3546 of 2007

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE-A1 : CERTIFIED COPY OF THE CHEQUE.

// TRUE COPY //

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P.S.TO JUDGE

C.T.RAVIKUMAR, J.

Crl.R.P.No.3546 of 2007

Dated 24th February, 2015

ORDER

This revision petition is directed against the conviction concurrently entered against the revision petitioner for the offence under Section 138 of the Negotiable Instruments Act. The revision petitioner was the accused in C.C.No.641 of 2003 and the first respondent herein was the complainant therein. The case of the first respondent was that the revision petitioner borrowed an amount of ₹ 4,00,000/- for meeting an unavoidable urgent personal need on 4.10.2001 and thereafter, in discharge of the said legally enforceable debt issued Ext.P1 cheque dated 4.12.2001 from his account maintained at the South Indian Bank, Sasthamcotta Branch. When the said cheque presented for encashment it was bounced due to paucity of funds. Thereupon, statutory notice was issued within the prescribed time limit intimating the revision petitioner of the factum of dishonour of the cheque and calling upon him to pay the amount due. It is the failure on the part of the revision petitioner to effect payment of the amount covered by the cheque within the statutorily prescribed period that constrained the first respondent to file the complaint which was taken on file and registered as C.C.No.641 of 2003, after complying with the

statutory procedures. Evidently, to bring home the charge against the revision petitioner the first respondent got himself examined as PW1 and got marked Exts.P1 to P4. On closure of the evidence of the complainant the revision petitioner was examined under Section 313 Cr.P.C. and he denied all the incriminating circumstances put to him. However, he did not adduce any defence evidence either oral or documentary. After a careful evaluation of the evidence the trial court found that the first respondent herein/the complainant has succeeded in establishing that the cheque in question was issued in discharge of a legally enforceable debt and it was dishonoured on a ground referable to the provisions under Section 138 of N.I. Act. After considering the evidence of the complainant consisting of his oral testimony as PW1 and documentary evidence in Exts.P1 to P4 the trial court found that the revision petitioner has committed the offence under Section 138 of the N.I.Act. Consequently, he was convicted thereunder and sentenced to undergo simple imprisonment for six months and he was also directed to pay a compensation of ₹ 4,00,000/- 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 15 days. Feeling aggrieved by the same the revision petitioner filed Crl.A.No.81 of 2007. The revision petitioner has taken up a contention before the appellate court that the cheque in question was issued to discharge the liability of `Alfa

Productions' which is a partnership firm. The appellate court considered the entire evidence and found that no evidence whatsoever was produced by the revision petitioner herein before the trial court or even at the appellate stage, in accordance with law, to establish that the cheque in question was issued to discharge a legally enforceable debt of 'Alfa Productions'. Evidently, the precise case of the first respondent/complainant was that it was issued in discharge of the personal liability of the revision petitioner. After a careful consideration of the evidence on record the appellate court found that the appreciation of evidence by the trial court could not be said to be perverse or against the weight of the evidence warranting appellate interference and virtually, the conclusions and findings arrived at by the trial court are perfectly in tune with the evidence on record. After such consideration the appellate court found no ground to interfere with the conviction as also the sentence. In the said circumstances, the conviction entered against and the sentence imposed on, the revision petitioner were confirmed. The captioned revision petition has been filed in the said circumstances against the judgment in Crl.A.No.81 of 2007.

2. I have heard the learned counsel for the revision petitioner and the learned counsel for the first respondent.

3. The learned counsel for the revision petitioner submitted that the prosecution against the revision petitioner has to fail for the sole reason that the Company 'Alfa Productions' was not made a party and therefore, there is a violation of the provisions under Section 141 of the N.I.Act. I have already taken note of the case of the first respondent/complainant. His definite case is that the cheque in question was issued to discharge a legally enforceable personal debt of the revision petitioner. Though the revision petitioner took up the contention that it was issued not for the purpose of discharging his personal liability but, for the purpose of discharging the liability of 'Alfa Productions' which is a partnership firm and to substantiate the same relied on the affixture of the seal of the company in Ext.P1 cheque such contentions were repelled by the courts below. He had not adduced evidence either oral or documentary. It is to be noted that the revision petitioner has not even mounted the box to give evidence. It is also to be noted that even when he was examined under Section 313, Cr.P.C. he did not have any such case. In such circumstances, the question is whether an inference of preponderance of probabilities could be drawn in favour of the revision petitioner's case by referring to the circumstances relied on by the revision petitioner. Evidently, the petitioner relies on the presence of the seal of the company 'Alfa Productions' in Ext.P1 cheque to support his case that it was issued for the purpose of discharging the liability of the

said firm. This was dealt with in detail by the trial court and also the appellate court in paragraph 8 of the judgment. I am in perfect agreement with the reasoning of the courts below holding that merely by relying on an affixture of seal in Ext.P1 the revision petitioner cannot be heard to contend that the cheque in question was not issued to discharge a legally enforceable debt of the revision petitioner and had it been so, he should have adduced evidence to substantiate the same. When there is absolute absence of any evidence either oral or documentary or any statement while being examined under Section 313 Cr.P.C. the revision petitioner cannot be heard to contend that the entire proceedings is vitiated for the failure to bring 'Alfa Productions' as an accused in this proceedings. In such circumstances, there is absolutely no merit in the contentions raised by the revision petitioner relying on the decision in Aneeta Hada v. Godfather Travels & Tours Pvt. Ltd. (2012 (2) KLT 736). Evidently, in this case, in view of the evidence revealed from the discussions the proceedings cannot be said to be vitiated for non-joinder of 'Alfa Productions' in the array of accused. I have already found that the evidence of the first respondent consisted of his own oral testimony as PW1 and Exts.P1 to P4. The evidence on record was considered in detail by the trial court as also by the appellate court and upon consideration conviction was entered against the revision petitioner. In view of the discussion as above I do not find any reason to interfere with

the conviction concurrently entered against the revision petitioner by the courts below under Section 138 of the N.I. Act and accordingly, it is confirmed.

4. Evidently, upon convicting the revision petitioner under Section 138 of the N.I. Act the trial court sentenced him to undergo simple imprisonment for six months. The petitioner was also directed to pay compensation of ₹ 4,00,000/- to the complainant and in default of payment of the amount of compensation he was directed to undergo simple imprisonment for a further period of 15 days. The appellate court found that the said sentence imposed on the revision petitioner is the condign punishment for the conviction under Section 138 of N.I. Act. However, I am of the view that in the light of the decision of the Hon'ble Apex Court in Damodar S. Prabhu v. Sayed Babalal (AIR 2010 SC 1907) in a case of dishonour of a cheque the pecuniary aspect has to be given preference over the punitive aspect and when it is evident that the revision petitioner herein was directed to pay an amount which is equal to the amount covered by the cheque in question a substantive sentence of imprisonment for six months is excessive. The intention of the legislature, as per the Hon'ble Apex Court, in enacting the provision was to make the drawer of the cheque to pay the amount by giving an opportunity and not to send him to jail. I am of the view that, in the

circumstances, while confirming the conviction of the revision petitioner under Section 138 of the N.I. Act it would only be in the interest of justice to modify the sentence and it is accordingly, modified to imprisonment till the rising of the court. It is ordered accordingly. Since the direction to pay the compensation of ₹ 4,00,000/- was passed by the courts below taking into account the fact that the amount directed to be paid is the amount covered by the cheque I do not find any reason to interfere with the same. In the said circumstances, while modifying the substantive sentence the direction to the revision petitioner to pay an amount of ₹ 4,00,000/- as compensation to the first respondent is confirmed and the revision petitioner is directed to pay ₹ 4,00,000/- as compensation to the first respondent under Section 357(3) Cr.P.C. In default of payment of the said amount the revision petitioner shall undergo simple imprisonment for one month. When this Court was about to dismiss this matter upholding the conviction but modifying the sentence the learned counsel for the revision petitioner sought for some reasonable time for the revision petitioner to effect payment of compensation. After hearing the learned counsel for the revision petitioner and taking into account the fact that the amount of compensation is ₹ 4,00,000/- I am of the view that some reasonable time can be granted. In the said circumstances, the learned Magistrate is directed to keep in abeyance all proceedings for effecting recovery of compensation for a period of eight months to

enable the revision petitioner to pay the amount of compensation. In the meanwhile, the revision petitioner shall appear before the trial court to undergo the sentence of imprisonment till the rising of the court on 25.7.2015. Needless to say that in case of failure on the part of the revision petitioner to pay the amount of compensation within the above stipulated time and/or 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.

This revision petition is thus allowed in part.

Sd/-
C.T.RAVIKUMAR
Judge

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