

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

Cr1.Rev.Pet.No. 217 of 2015 (B2)

AGAINST THE JUDGMENT IN CRL.A 593/2012 of SESSIONS COURT,
THRISSUR DATED 17-11-2014

AGAINST THE JUDGMENT IN ST 839/2009 of J.F.C.M.COURT -III,
THRISSUR DATED 6-6-2012

REVISION PETITIONER(S)/ RESPONDENT/ COMPLAINANT:

MANOJ FRANCIS, AGED 36 YEARS,
S/O.FRANCIS, KUNDUPARAMBIL HOUSE, NELLIKUNNU DESOM,
OLLUKKARA VILLAGE, THRISSUR.

BY ADV. SRI.DILIP J. AKKARA

RESPONDENT(S)/APPELLANT/ACCUSED/STATE:

1. LAKSHMI BALASUBRAMANIAN, AGED 52 YEARS,
W/O. BALASUBRAMANIAN, KUMARAMKUNNATHU HOUSE,
TRINITY CONVENT ROAD, KOLAZHY PO, THRISSUR-680010.

2. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.

R1 BY ADV. SRI.V.C.MADHAVANKUTTY
R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 09-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. No.217 of 2015

Dated this the 9th day of July, 2015.

O R D E R

The revision petitioner is the complainant in S.T.No.839/2009 on the files of the Judicial First Class Magistrate's Court-III, Thrissur. He was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act') on a complaint filed by the first respondent herein alleging that the cheque issued for an amount of Rs.8,50,000/- in favour of the first respondent had been dishonoured and returned for want of sufficient funds. The accused/first respondent entered appearance and pleaded guilty. Consequently, she was sentenced to undergo simple imprisonment for one day till rising of the court and to pay a sum of Rs.8,50,000/- to the complainant as compensation under Section 357(3) of the Cr.P.C. on or before 15.8.2012 and in default, to undergo simple imprisonment for two months. The accused filed

CrI.A.No.593/2012 before the Sessions Court, Thrissur challenging the sentence imposed on her. After considering the arguments raised by the accused, the appellate court set aside the judgment passed by the trial court and remanded the matter to the trial court for disposing the matter afresh in accordance with law. This revision petition is filed challenging the impugned judgment passed by the appellate court remanding the matter to the trial court for initiating fresh proceedings from the stage at which the plea of the accused was recorded.

2. Heard both sides. Going by the impugned judgments under challenge it is seen that the accused pleaded guilty in the trial court and she was sentenced for imprisonment till rising of the court and to pay an amount of Rs.8,50,000/- to the complainant on or before 15.8.2012 as compensation under Section 357(3) of the Cr.P.C. with a default clause of simple imprisonment for two months. Being a case where the accused pleaded guilty, the scope of appeal is confined to sentence only. Therefore in appeal, the appellate

court ought to have considered the legality and propriety and the proportionality of the sentence only. There is no finding to the effect that the sentence imposed on the accused is inadequate or excessive or disproportionate with the nature and gravity of the offence, but remitted the matter back to the trial court for fresh proceedings.

3. The learned counsel for the first respondent/accused submits that she is ready to pay the compensation as directed by the court below, but she wants some time due to paucity of funds. The learned counsel for the revision petitioner submits that a reasonable time can be given to her to pay the compensation.

4. In my opinion, no purpose will be served by remitting the case back to the trial court, particularly in the absence of any illegality, impropriety or disproportionality in the imposition of sentence. The first respondent/accused is given six months time to pay the compensation.

In supersession of the sentence imposed by the

trial court and judgment passed by the appellate court, the first respondent/accused will stand sentenced as follows:

- i. The first respondent/accused shall undergo simple imprisonment for one day till rising of the court.
- ii. She shall pay a compensation of Rs.8,50,000/- (Rupees Eight lakhs and fifty thousand only) within a period of six months from today to the revision petitioner/complainant, under Section 357(3) Cr.P.C.
- iii. She shall appear before the Trial Court to suffer the substantive sentence of simple imprisonment as ordered above on or before 9.1.2016 with sufficient proof to show payment of compensation.
- iv. In default, she shall undergo simple imprisonment for a period of two months.
- v. If she had deposited any amount in the trial court, in compliance with the direction of this Court or appellate court, that amount shall be given credit to and the balance alone need be paid as compensation. In that event, the revision petitioner/complainant is allowed to realise such deposit, if any.

This criminal revision petition is disposed of as above.

Sd/-
K. HARILAL, JUDGE

okb.