

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

Crl.Rev.Pet.No. 220 of 2015 ()

**AGAINST THE JUDGMENT IN CRL.A.NO.67/2013 of ADDL.SESIONS COURT,
NEYATTINKARA DATED 15-02-2014**

**AGAINST THE JUDGMENT IN S.T.NO.124/2012 of JUDICIAL FIRST CLASS
MAGISTRATE COURT-VIII, TRIVANDRUM DATED 31-01-2013**

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**K.SASIDHARAN NAIR, AGED 60 YEARS,
S/O.KRISHNAPILLAI, MANNUAYATH VEEDU, VILAPPIL VILLAGE,
PULIYARAKONAM P.O., NEYYATTINKARA TALUK.**

BY ADV. SRI.POOVAPPALLY M.RAMACHANDRAN NAIR

RESPONDENT(S)/STATE & COMPLAINANT:

**1. G.GOPINATHAN NAIR, AGED 48 YEARS,
S/O.BALAN PILLAI, SARATH NIVAS, CHERIYAKONNI P.O.,
CHERIYAKONNI, THIRUVANANTHAPURAM-695 001.**

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

**R1 BY ADVS. SRI.T.K.RADHAKRISHNAN
SMT.S.SREEDEVI(ALP)
SRI.K.J.GLADIS**

R2 BY PUBLIC PROSECUTOR SRI.N.SURESH.

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
18-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Bb

K. Ramakrishnan, J.

=====

Crl.R.P.No.220 of 2015

=====

Dated this, the 18th day of February, 2015.

O R D E R

Accused in S.T.No.124/2012 on the file of the Judicial First Class Magistrate Court - VIII, Thiruvananthapuram is the revision petitioner herein.

2. The case was taken on file on the basis of a private complaint filed by the complainant - first respondent alleging offence under Section 138 of the Negotiable Instruments Act (hereinafter called 'the Act').

3. The case of the complainant in the complaint was that the revision petitioner borrowed a sum of Rs.50,000/- and in discharge of that liability, he had issued Ext.P1 cheque which when presented was dishonoured for the reason 'funds insufficient' evidenced by Ext.P2 dishonour memo and that was intimated to the complainant by his banker vide Ext.P3 intimation letter. Complainant issued Ext.P4 notice vide Ext.P5 postal receipt to the revision petitioner intimating the dishonour and demanding payment of the amount which was received by the revision petitioner evidenced by Ext.P6 postal acknowledgment. He had not paid the amount. So, he had

committed the offence punishable under Section 138 of the Act. Hence the complaint.

4. The case was originally filed before the Judicial First Class Magistrate Court – III, Thiruvananthapuram where it was taken on file as S.T.No.1375/2009 and thereafter, it was made over to Judicial First Class Magistrate Court - VIII, Thiruvananthapuram where it was re-numbered as S.T.No.124/2012.

5. When the revision petitioner appeared before the court below, the particulars of offence were read over and explained to him and he pleaded not guilty. In order to prove the case of the complainant, the complainant himself was examined as PW1 and Exts.P1 to P6 were marked on his side. After closure of the complainant's evidence, the revision petitioner was questioned under Section 313 of Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the complainant's evidence. He had further stated that, he had not committed any offence and there was no transaction between him and the complainant and the cheque given to one Bhasikutty Nair was misused and the present complaint was filed. In order to prove his case, the said Bhasikutty Nair was examined as DW1.

6. After considering the evidence on record, the court below found the revision petitioner guilty under Section 138 of the Act and convicted him thereunder and sentenced him to undergo imprisonment till rising of court and also to pay the cheque amount of Rs.50,000/- as compensation to PW1 in default to undergo simple imprisonment for two months under Section 357(3) of Code of Criminal Procedure. Though he filed Crl.Appeal.No.67/2013 before the Sessions Court, Thiruvananthapuram which was made over to Additional Sessions Court, Neyyattinkara for disposal, the same was dismissed by the learned Additional Sessions Judge by the impugned judgment. Aggrieved by the same, the present revision has been filed by the revision petitioner – accused before the court below.

7. The Counsel for the revision petitioner submitted that no opportunity was given to him to be heard and the appeal was dismissed by the Additional Sessions Judge without hearing him. Further, courts below have not properly appreciated the evidence and the evidence of DW1 has not been appreciated in the right perspective. He had rebutted the presumption. The Counsel also submitted that, if for any reason, this court is not inclined to interfere with the conviction, he wanted time and the imprisonment till rising of

court to be avoided.

8. The Counsel for the first respondent supported the concurrent findings of the court below.

9. The case of the complainant in the complaint was that revision petitioner borrowed a sum of Rs.50,000/- and issued Ext.P1 cheque in discharge of that liability. But, the case of the revision petitioner was one of total denial. His case was that, the cheque given to DW1 was misused and the present complaint was filed. In order to prove the case of the complainant, the complainant himself was examined as PW1 and he deposed in support of his case in the complaint. He denied the suggestion that, there was no transaction between him and the revision petitioner and the cheque given to DW1 was misused after stealthily obtaining from him. It is true that DW1 was examined on the side of the revision petitioner to prove that, he had money transaction with him and he had paid the amount and the complainant had come and obtained the cheque stating that, he was sent by the revision petitioner. But, in the cross examination, he had admitted that he had not taken any steps against the complainant for misusing the cheque. The revision petitioner also did not send any reply to the notice issued. So, under the circumstances, a reading of the evidence of DW1 will go to show that he is now trying to

help the revision petitioner and that was the reason why he came and deposed before the court in favour of the revision petitioner which is not believable. Though there was no representation for the appellant in spite of opportunities given, the learned Additional Sessions Judge, in view of the decision of the Hon'ble Supreme Court, rightly decided the matter on merit which cannot be said to be illegal. So, on the overall circumstances, the courts below have appreciated the evidence properly and come to the conclusion that the complainant had proved that the revision petitioner borrowed the amount and issued Ext.P1 cheque in discharge of that liability which, when presented, was dishonoured and in spite of notice issued, he had not paid the amount and thereby, he had committed the offence punishable under Section 138 of the Act and rightly convicted him for the said offence and the concurrent findings of the court below on this aspect do not call for any interference.

10. As regards the sentence is concerned, the trial court had sentenced him to undergo imprisonment till rising of court and also to pay the cheque amount of Rs.50,000/- as compensation to the complainant in default to undergo simple imprisonment for two months under Section 357(3) of Code of Criminal Procedure and the same was confirmed by the

appellate court. Maximum leniency has been shown by the courts below in imposing the sentence also. The court below had only imposed imprisonment till rising of court and ordered the cheque amount alone as compensation though the transaction was of the year 2009. So, I don't find any reason to interfere with the sentence imposed also which cannot neither be excessive nor harsh. The Counsel for the revision petitioner wanted three months time. This was opposed by the Counsel for the first respondent. Considering the amount involved, this court feels that three months time can be granted to pay the amount. So, the revision petitioner is granted time till 18.05.2015 to pay the amount. Till then, the execution of sentence is directed to be kept in abeyance.

With the above direction and observation alone, the revision petition is dismissed.

Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.Ramakrishnan, Judge.

Bb

[True copy]

P.A to Judge