

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. 221 of 2015 ()

AGAINST THE JUDGMENT IN CRL.A.NO.399/2012 of I ADDL.SESIONS JUDGE,
PALAKKAD DATED 21-08-2014

AGAINST THE JUDGMENT IN S.T.NO.3278/2010 of JUDICIAL FIRST CLASS
MAGISTRATE COURT-I, PALAKKAD DATED 04-10-2012

REVISION PETITIONER(S)/APPELLANT/ACCUSED:-:

D.RAMKUMAR, AGED 45 YEARS,
S/O.LATE PAZHANI SWAMI, PRECOT MILL COLONY, KANJIKODE,
PALAKKAD TALUK, PALAKKAD DISTRICT.

BY ADVS.SRI.BINOY VASUDEVAN
SMT.P.G.BABITHA

RESPONDENT(S)/RESPONDENTS/COMPLAINANT/STATE:-:

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

2. C.MANIMEKALA, AGED 49 YEARS
W/O.CHANDRAN, RESIDING AT NO.1, RAJEEV NAGAR,
PRECOT MILL COLONY, KANJIKODE, PALAKKAD TALUK,
PALAKKAD DISTRICT.

R1 BY PUBLIC PROSECUTOR SRI.N.SURESH.
R2 BY ADV. SRI.VINOD KUMAR.C

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

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K. Ramakrishnan, J.

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Crl.R.P.No.221 of 2015

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

ORDER

Accused in S.T.No.3278/2010 on the file of the Judicial First Class Magistrate Court-I, Palakkad is the revision petitioner herein.

2. The case was taken on file on the basis of a private complaint filed by the complainant 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.2,75,000/- and issued a cheque dated 05.11.2007 which was dishonoured and he filed S.T.No.2388/2007. The case was settled by executing Ext.P1 agreement agreeing to pay the amount and on that basis, the earlier case was withdrawn by the complainant. As per the agreement, he had agreed to pay an amount of Rs.1,85,000/- and he paid Rs.25,000/- in cash and issued Ext.P2 cheque dated 16.08.2010 for the balance amount of Rs.1,60,000/- which when presented was dishonoured for the reason 'funds insufficient' evidenced by Ext.P5 dishonour memo. The complainant issued Ext.P6 notice

vide Ext.P6(a) postal receipt and the same was received by the revision petitioner evidenced by Ext.P6(b) postal acknowledgment. He had sent Ext.P7 reply with false allegations. He had not paid the amount. So, he had committed the offence punishable under Section 138 of the Act. Hence the complaint.

4. 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 herself was examined as PW1 and Exts. P1 to P7, P6(a), P6(b) were marked on her side. After closure of the complainant's evidence, the revision petitioner was questioned under Section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the complainant's evidence. He had further stated that, she had obtained two blank cheques and also a blank signed stamp paper of Rs.50/- and misusing the same, Ext.P1 agreement was executed and misusing the other cheque, the present complaint was filed. No evidence was adduced on his side in defence.

5. After considering the evidence on record, the trial

court found the revision petitioner guilty under Section 138 of the Act and convicted him thereunder and sentenced him to undergo simple imprisonment for two months and also to pay the cheque amount of Rs.1,60,000/- as compensation to the complainant in default to undergo simple imprisonment for two months under Section 357(3) of Code of Criminal Procedure. Aggrieved by the same, he filed Criminal Appeal No.399/2012 before the Sessions Court, Palakkad which was made over to First Additional Sessions Court, Palakkad for disposal and the learned Additional Sessions Judge dismissed the appeal confirming the order of conviction and sentence passed by the court below. Aggrieved by the same, the present revision has been filed by the revision petitioner - accused before the court below.

6. The second respondent appeared through Counsel and submitted that, he is prepared to appear in the revision also. So, this court felt that the revision can be admitted and disposed of on merit after hearing both sides. So, the revision is admitted and heard and disposed of today itself.

7. The Counsel for the revision petitioner submitted that court below had not properly appreciated the evidence and also prayed for leniency in sentence.

8. The Counsel for the second respondent supported the concurrent findings of the court below. The Counsel for the second respondent submitted, if for any reasons, this court is inclined to reduce the substantive sentence, the complainant may be adequately compensated by enhancing the compensation amount.

9. Heard the Public Prosecutor as well.

10. The case of the complainant in the complaint was that revision petitioner borrowed Rs.2,75,000/- earlier and issued a cheque and when the cheque was dishonoured, he filed S.T.No.2388/2007 and that case was compromised and it was withdrawn on the basis of Ext.P1 agreement entered into between the revision petitioner and the complainant, by which, the amount payable was quantified as Rs.1,85,000/- out of which, Rs.25,000/- was paid as cash and Ext.P2 cheque (post dated cheque) was given for the balance amount, which, when presented was dishonoured. The case of the revision petitioner was that, he had earlier given two cheques and a blank signed stamp paper, which was misused and the present complaint was filed. In order to prove the case of the complainant, complainant herself was examined as PW1 and she deposed in support of her case in the complaint. Further, it will be seen

from Ext.P1 agreement that the agreement was prepared in the stamp paper purchased on 09.02.2010. The earlier case was of the year 2007. If really as submitted by the Counsel for the revision petitioner, the stamp paper and cheques were given earlier, there was no possibility of preparing Ext.P1 agreement in a stamp paper which was purchased long after the filing of the earlier case S.T.No.2388/2007 which itself will falsify the case of the revision petitioner. Further, he had sent a reply with false allegations which was not supported by any evidence also. So, considering the circumstances, the court below was perfectly justified in relying on the evidence of PW1 and the documentary evidence produced in coming to the conclusion that Ext.P2 cheque was issued in discharge of a legally enforceable debt for the amount quantified as per Ext.P1 agreement and the cheque 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. So, the concurrent findings of the court below on this aspect do not call for any interference.

11. As regards the sentence is concerned, the court below sentenced the revision petitioner to undergo simple

imprisonment for two months and also to pay the cheque amount of Rs.1,60,000/- as compensation to the complainant in default to undergo simple imprisonment for two months more. This was confirmed by the appellate court.

12. In the decision reported in **Damodar S. Prabhu Vs. Sayed Babalal H. [AIR 2010 SC 1907]**, the Hon'ble Supreme Court has held that the civil wrong has become a criminal offence by virtue of incorporation of Section 138 in the Negotiable Instruments Act and it is not necessary that a person must be sent to jail and the intention of the legislature is to make the drawer of the cheque to pay the amount and not to send him to jail. This was reiterated in the decision reported in **Kaushalya Devi Massand Vs. Roopkishore [AIR 2011 SC 2566]**.

13. Further, in the decision reported in **Somnath Sarkar Vs. Utpal Basu Mallick [2013 (4) KLT 350 (SC)]**, the Hon'ble Supreme Court has held that the court has no power to award compensation in 138 matters, but, court can impose double the cheque amount as fine and after fixing the fine amount, compensation can be awarded out of the fine amount invoking the power under Section 357(1)(b) of the Code of Criminal Procedure. So, considering these aspects,

this court feels that the sentence imposed by the court below can be set aside and modified as follows:

The revision petitioner is sentenced to undergo imprisonment till rising of the court and also to pay a fine of Rs.1,75,000/- in default to undergo simple imprisonment for four months. If the fine amount is realised, the same be paid to the complainant as compensation under Section 357(1)(b) of Code of Criminal Procedure. Six months time is prayed for by the revision petitioner which appears to be reasonable. So, revision petitioner is granted time till 18.08.2015 to pay the amount. Till then, the execution of sentence is directed to be kept in abeyance.

With the above modification of the sentence and direction to pay the amount, the revision petition is allowed in part and disposed of accordingly.

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

Sd/-
K.Ramakrishnan, Judge.

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[True copy]

P.A to Judge