

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. 232 of 2015 ()

AGAINST THE JUDGMENT IN CRA 484/2012 of COURT OF I ADDL. SESSIONS
JUDGE, THRISSUR DATED 16-10-2014

AGAINST THE JUDGMENT IN CC 1234/2008 of COURT OF JUDICIAL FIRST
CLASS MAGISTRATE -I,THRISSUR DATED 03-08-2012

REVISION PETITIONER/APPELLANT/ACCUSED:

ARUNKUMAR, AGED 41 YEARS
S/O. RAMACHANDRAN, CHANDRALAYAM, KAVASSERY POST
E P VILLAGE, ALATHUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.BABY MATHEW

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

1. SATHYAKUMAR
S/O. CHERATTU KUMARAN NAIR
EDAKUNNY 7 VILLAGE & DESOM, THRISSUR TALUK.

2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERAL, ERNAKULAM.

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:

C.T.RAVIKUMAR, J.

Crl.R.P.No.232 of 2015

Dated 24th February, 2015

ORDER

This revision petition is directed against the judgment in Crl.A.No.434 of 2012 dated 16.10.2014 of the Court of Additional Sessions Judge-I, Thrissur whereby and whereunder the conviction entered against the revision petitioner for the offence under Section 138 of the Negotiable Instruments Act in C.C.No.1234 of 2008 of the Court of Judicial First Class Magistrate-I, Thrissur was confirmed and the sentence imposed therefor was modified. The case of the first respondent/complainant was that Ext.P1 cheque issued by the revision petitioner in discharge of a legally enforceable debt on its presentation for encashment got dishonoured due to paucity of fund in the account maintained by the revision petitioner. Though the first respondent/complainant issued statutory notice intimating the revision petitioner regarding the factum of dishonour of the cheque and calling upon him to pay the amount due the revision petitioner did not effect payment of the amount covered by the cheque in question. It is in the said circumstances that the complaint that ultimately culminated in the registration of the aforesaid Calendar Case was filed. To bring home the

charge the complainant got himself examined as PW1 and got marked Exts.P1 to P6. The revision petitioner who was examined under Section 313, Cr.P.C. after the closure of the evidence of the complainant denied all the incriminating circumstances put to him and at the same time, filed a statement to the effect that the cheque in question was obtained by the first respondent from the Police Station when he was summoned to the Police Station in connection with a complaint filed by the first respondent. After appreciating the evidence the trial court found that the first respondent has succeeded in establishing the factum of commission of offence under Section 138 of the Negotiable Instruments Act by the revision petitioner and consequently, convicted him thereunder and sentenced to undergo simple imprisonment for a period of one year and to pay a fine of ₹ 1,11,000/-. It was also directed that out of the said amount of fine ₹ 1,06,000/- shall be given to the complainant as compensation under Section 357(1) Cr.P.C. and in default of payment of fine the revision petitioner was directed to undergo simple imprisonment for a further period of six months. The revision petitioner took up the matter in appeal as Crl.A.No.484 of 2012. The Court of Additional Sessions Judge-I, Thrissur, the appellate court found the contentions raised by the revision petitioner to mount challenge against the conviction entered against him as meritless and consequently, confirmed the conviction. However, the appellate court interfered with

the substantive sentence imposed against the revision petitioner and set aside the same. For the conviction under Section 138 of the N.I. Act the revision petitioner was sentenced to pay a fine of ₹ 1,99,810/- and in default of payment of fine he was directed to undergo simple imprisonment for a further period of six months. The amount of fine on realisation was directed to be paid as compensation to the complainant under Section 357(1) of Cr.P.C. The captioned revision petition has been filed in the said circumstances.

2. I have heard the learned counsel for the petitioner and also the learned Public Prosecutor.

3. As noticed hereinbefore, the courts below entered conviction against the revision petitioner under Section 138 of the N.I. Act concurrently. In such circumstances, there cannot be any doubt with respect to the position that an interference in invocation of the revisional jurisdiction is invited in case the revision petitioner brings out a case of utter perverse appreciation of evidence or succeeds in showing that the conclusions and findings of the courts below are totally against the weight of evidence. Such interference is also permissible in case an error in law is also brought out. In this case, the first respondent/complainant deposed while being examined as PW1 perfectly in tune with his

allegations in the complaint. The case of the first respondent is that Ext.P1 cheque was issued in order to discharge a personal liability of the revision petitioner. True that during the examination under Section 313, Cr.P.C. the revision petitioner filed a statement to the effect that Ext.P1 cheque was issued due to the threat exerted by the Police personnel. It is also evident that the revision petitioner has not adduced any evidence at all either oral or documentary, to substantiate the said contention. The appellate court found that the evidence tendered by PW1 was that on the day the revision petitioner was summoned to the police station no cheque was executed and it was after two days therefrom that the revision petitioner executed and delivered Ext.P1 cheque. Even after the receipt of the statutory notice the revision petitioner had not lodged any complaint either against the Police officials or against the first respondent. So also, it was not noticed that he had raised any grievance against any police officer before the higher authorities. Ext.P1 cheque is dated 20.11.2004 and when the said cheque was presented for encashment it was dishonoured on the ground of insufficiency of fund in the account maintained by the revision petitioner. The said fact is evident from Ext.P2 memo dated 16.3.2005. The said fact was intimated as per Ext.P3. Ext.P6 would reveal that the lawyer notice was served on the petitioner in 2005 itself. Even after receiving the lawyer notice the revision petitioner did not initiate any legal action either against the

Police officials or against the first respondent. It is to be noted that during the trial the revision petitioner would admit the delivery of Ext.P1 cheque and the signature and writing thereon. In other words, the revision petitioner had not disputed the execution of Ext.P1 cheque before the trial court. In such circumstances, the oral testimony of PW1 was taken as sufficient by the courts below to prove the factum of execution. The evidence of PW1 with Exts.P2 to P6, as discussed by the courts below, would reveal that pursuant to the presentation of the cheque in question for encashment it was dishonoured on the ground of insufficiency of fund in the account maintained by the revision petitioner and thereafter, the procedures mandatorily to be followed in view of with the provisions under the Negotiable Instruments Act, were scrupulously followed by the first respondent prior to the filing of the complaint. It is taking into account all such aspects that the courts below arrived at the finding that the first respondent succeeded in establishing that the revision petitioner has committed the offence under Section 138 of N.I. Act. The petitioner could not bring out any ground so as to compel this Court to exercise the revisional jurisdiction. In the said circumstances, I do not find any legal infirmity or illegality warranting interferences with the conviction concurrently entered against the revision petitioner by the courts below. Hence, it is confirmed.

4. For the conviction under Section 138 of the N.I. Act the trial court sentenced the petitioner as aforesaid. The substantive sentence imposed by the trial court directing the revision petitioner to undergo simple imprisonment for one year was set aside by the appellate court. There cannot be any doubt with respect to the position that a sentence must follow a conviction. In such circumstances and taking into account the fact that the amount covered by the cheque in question was ₹ 1,06,000/- and the cheque in question was issued on 20.11.2014 the revision petitioner was sentenced to pay a fine of ₹ 1,99,810/- and it was ordered to be paid to the first respondent/complainant under Section 357 (1), Cr.P.C. Though paragraph 19 of the judgment of the appellate court would reveal that the said figure was arrived at after calculating the interest at the rate of 9% on the amount covered by the cheque in question on considering all the aspects including the setting aside of the substantive sentence to undergo imprisonment for one year I do not find any reason to interfere with the sentence of fine imposed by the appellate court. In the result, the sentence imposed on the revision petitioner by the appellate court in substitution of the sentence imposed by the trial court is also confirmed. When this Court was about to dismiss the revision petition without any qualification, the learned counsel for the revision petitioner sought some time to the revision petitioner to pay the fine. In the interest of justice, the learned Magistrate is directed to keep

in abeyance the execution of the sentence for a period of eight months so as to enable the revision petitioner to pay the amount within the above stipulated period. In case of failure on the part of the revision petitioner to pay the amount within the above stipulated period the learned Magistrate shall take appropriate steps for the execution of the sentence, forthwith. Needless to say that if any amount has already deposited by the revision petitioner it shall be given credit towards the fine amount.

Subject to the above, this revision petition is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS