

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

Crl.Rev.Pet.No. 252 of 2015 ()

AGAINST THE JUDGMENT IN CRL.A 181/2013 of COURT OF ADDITIONAL
SESSIONS JUDGE-IV, THODUPUZHA DATED 10-12-2014

AGAINST THE JUDGMENT IN ST 103/2012 of J.M.F.C.-II,THODUPUZHA
DATED 28-10-2013

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

JOLLY VARGHESE, AGED 39 YEARS
D/O.VARGHESE, ERACHERIYIL HOUSE, KANJIKUZHYP.O
IDUKKI DISTRICT.

BY ADVS.SRI.T.V.GEORGE
SRI.JIMMY GEORGE (THADATHIL)

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

1. SREE GOKULAM CHITS AND FINANCE COMPANY (PVT) LTD,
ARCOT ROAD, KODAMBAKKAM, CHENNAI-600 024
REPRESENTED BY POWER OF ATTORNEY HOLDER, JOMY.M.C
S/O.CHACKO, SENIOR BUSINESS MANAGER
THODUPUZHA BRANCH.

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

R2 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
23-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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CRL.R.P. No.252 OF 2015

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Dated this the 23rd day of February, 2015

ORDER

This revision petition is directed against the judgment in Crl.A.No.181 of 2013 of the Court of IV Additional Sessions Judge, Thodupuzha confirming the conviction and modifying the sentence imposed on the revision petitioner in S.T.No.103 of 2012 of the Court of Judicial First Class Magistrate-II, Thodupuzha. The revision petitioner was tried for the offence punishable under Section 138 of the Negotiable Instruments Act. The case of the first respondent/complainant was that the revision petitioner stood as guarantor for her husband Alichan Varghese in a chitty conducted by the first respondent and in discharge of the legally enforceable debt, she issued Ext.P8 cheque dated 6.7.2011. But, on presentation for encashment the said cheque was dishonoured due to insufficiency of

funds in the account of the revision petitioner. Thereupon, the complainant issued a notice intimating the revision petitioner of the dishonour of the cheque and calling upon her to pay the amount due. It is the failure on the part of the revision petitioner to effect payment within the statutorily prescribed period that constrained the complainant to file the complaint which was taken on file and numbered as S.T.No.23 of 2012 by the Court of Chief Judicial Magistrate, Thodupuzha. Thereafter the case was made over to the Court of Judicial First Class Magistrate-II, Thodupuzha and re-numbered as S.T.No.103 of 2012. On due process the revision petitioner appeared before the court and the particulars of the charge were read over and explained to her and she pleaded not guilty. To bring home the charge against the revision petitioner, the complainant examined PW1 and PW2 and got marked Exts.P1 to P12. On the closure of the evidence of the complainant, the revision petitioner was examined under Section 313 Cr.P.C. and she denied all the

incriminating circumstances put to her. However, no defence evidence was adduced. On a careful evaluation of the evidence, the trial court found that the complainant has succeeded in establishing the fact that the revision petitioner has committed the offence under Section 138 of the Negotiable Instruments Act conclusively and consequently, convicted her thereunder and sentenced to undergo simple imprisonment for a period of four months and to pay a fine of ₹115882/-. In default of payment of fine, the revision petitioner was ordered to undergo simple imprisonment for a further period of two months. The fine amount, if realised, was directed to be paid to the complainant as compensation under Section 357(1) of Cr.P.C. The revision petitioner took up the matter in appeal as Crl.A.No.181 of 2013 before the Court of IV Additional Sessions Judge, Thodupuzha. Though various contentions were raised against the judgment of the trial court, the learned IV Additional Sessions Judge found them meritless and found no reason to invoke the appellate jurisdiction. It

was held that the conclusions and findings of the trial court are perfectly in tune with the evidence adduced. In the said circumstances the appellate court confirmed the conviction but, at the same time, modified the sentence. The substantive sentence was reduced to simple imprisonment till the rising of the court. The sentence to pay a fine of ₹115882/- and the default clause were maintained. The captioned revision petition has been filed against the said judgment.

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

3. As noticed hereinbefore, conviction was entered concurrently against the revision petitioner and the jail sentence imposed against the revision petitioner by the trial court was modified by the appellate court as imprisonment till the rising of the court. In such circumstances, a further interference with the conviction by

exercising the revisional jurisdiction is called for only if the revision petitioner succeeds in establishing that the appreciation of evidence by the courts below is utterly perverse or that the conclusions arrived at are against the weight of the evidence. Having carefully gone through the pleadings in this revision petition and also after hearing the learned counsel for the revision petitioner, I have no hesitation to hold that no such grounds were established. No error in law was also brought out. In the said circumstances, I do not find any reason to interfere with the conviction concurrently entered against the revision petitioner and accordingly, the conviction entered against the revision petitioner under Section 138 of the Negotiable Instruments Act is confirmed.

4. With respect to the sentence, evidently, the appellate court interfered with the jail sentence and modified it to imprisonment till the rising of the court and the sentence to pay a fine of ₹115882/- and

the default clause were maintained. The direction to pay the amount of fine, if realised, to the complainant as compensation under section 357(1) Cr.P.C was also modified. It is to be noted that ₹115882/- is the amount covered by the cheque in question and Ext.P8 cheque is dated 6.7.2011. In the said circumstances, I do not find any reason whatsoever to interfere with the sentence imposed by the trial court which was modified by the appellate court and in the result, the sentence imposed against the revision petitioner is also confirmed. When this Court was about to dismiss the revision petition without any qualification, the learned counsel for the revision petitioner submitted that some reasonable time may be granted to the revision petitioner to effect payment of the amount of fine. Having heard the learned counsel for the revision petitioner, I am inclined to direct the learned Magistrate to keep in abeyance execution of the sentence for a period of five months to enable the revision petitioner to pay the amount of fine and to appear before the trial court to suffer the

sentence within the stipulated time. Ordered accordingly. Needless to say that in case of failure on the part of the revision petitioner to pay the amount of fine and to appear before the trial court, within the above stipulated time, appropriate steps shall be taken in accordance with law to execute the sentence, expeditiously.

Subject to the above, this revision petition is dismissed.

Sd/-
C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

C.T. RAVIKUMAR

(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010