

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

Crl.Rev.Pet.No. 261 of 2015 ()

AGAINST THE JUDGMENT IN CRA 451/2013 of II ADDL. SESSIONS
COURT,PALAKKAD DATED 08-12-2014

AGAINST THE JUDGMENT IN ST 235/2012 of J.M.F.C., CHITTUR DATED
30.11.2013

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

USHA @ USHA KUMARI, AGED 40 YEARS
W/O. ANIL KUMAR MENON, VADAVANNUR, CHITTUR
PALAKKADU.

BY ADV. SRI.SYAM J. SAM

RESPONDENT(S)/RESPONDENTS/STATE:

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

2.K.KRISHNA DAS, AGED 32 YEARS
S/O. KOCHAN, NADUVAKKADU VEEDU, VITHANASERY
NENMARA, CHITTUR, PALAKKADU-678101.

R1 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 25-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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CRL.R.P. No.261 OF 2015

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Dated this the 25th day of February, 2015

ORDER

This revision petition is directed against the judgment in Crl.A.No.451 of 2013 of the Court of Sessions Judge, Palakkad confirming the conviction and modifying the sentence imposed on the petitioner in S.T.No.235 of 2012 of the Court of Judicial First Class Magistrate, Chittur. The revision petitioner was tried for the offence punishable under Section 138 of the Negotiable Instruments Act before the trial court. The allegation of the second respondent/complainant is that the revision petitioner borrowed an amount of ₹3,00,000/- and in discharge of the said legally enforceable debt, she issued Ext.P2 cheque. 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 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.235 of 2012. On due process, the petitioner appeared before the court and the particulars of the charge were read over and explained to her and she pleaded not guilty. The complainant got himself examined as PW1 and got marked Exts.P1 to P6. On the closure of the evidence of the complainant, the petitioner herein was examined under Section 313, Cr.P.C. and she denied all the incriminating circumstances put to her. The revision petitioner did not mount the box and she got examined one Chandran as DW1 and got marked Exts.D1 and D1(a). On a careful evaluation of the evidence, the trial court found that the complainant has succeeded in establishing the fact that the petitioner herein has committed the offence under Section 138 of the Negotiable Instruments Act. Consequently, she was convicted thereunder and sentenced to undergo imprisonment till the rising of court and to pay a

compensation of ₹3,00,000/- under section 357(3) Cr.P.C and in default of payment of compensation, to undergo simple imprisonment for three months. The petitioner took up the matter in appeal as Crl.A.No.451 of 2013 before the Court of Sessions Judge, Palakkad. Various contentions were raised against the judgment of the trial court. However, the learned Sessions Judge found no ground to invoke the appellate jurisdiction to overturn the conviction. It was found that the conclusions and findings of the trial court are perfectly in tune with the evidence on record. In the said circumstances, the appellate court confirmed the conviction but, modified the sentence. The revision petitioner was sentenced to undergo imprisonment till the rising of the court and to pay a fine of ₹3,01,000/-. On realisation of the amount of fine, an amount of ₹3,00,000/- was ordered to be paid to the complainant as compensation under Section 357(1) (b) Cr.P.C. In default of payment, the petitioner was directed to undergo simple imprisonment for a period of three months. The captioned revision petition has been filed against the said judgment.

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

3. As noticed hereinbefore, conviction was concurrently entered against the revision petitioner by the courts below. In such circumstances, to interfere with the conviction in exercise of the revisional jurisdiction the petitioner has to establish that there is utter, perverse appreciation of evidence by the courts below 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 do not find any reason to interfere with the conviction concurrently entered against the revision petitioner. No error in law was also brought out. In the said circumstances, the conviction entered against the petitioner under Section 138 of the Negotiable Instruments Act is liable to be confirmed and it is accordingly, confirmed.

4. With respect to the sentence imposed on the revision petitioner, evidently, the appellate court modified the same. The sentence to undergo imprisonment till the rising of the court was maintained. The direction to pay compensation was modified and the revision petitioner was sentenced to pay a fine of ₹3,01,000/- and in default of payment of fine, the revision petitioner was directed to undergo imprisonment for a period of three months. From the amount of compensation, on realisation, an amount of ₹3,00,000/- was directed to be given to the complainant as compensation under section 357(1)(b), Cr.P.C. Ext.P2 cheque is dated 28.10.2011 and the cheque amount is ₹3,00,000/-. In such circumstances, I do not find any reason whatsoever to interfere with the sentence imposed by the appellate court and hence, it is also liable to be 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 compensation. Having heard the learned counsel for the petitioner while dismissing this revision petition I am inclined to direct the learned Magistrate to keep in abeyance execution of the sentence for a period of seven months to enable the revision petitioner to pay the amount of fine and to appear to undergo the imprisonment till the rising of the court within the above stipulated time. Ordered accordingly. In case of failure on the part of the revision petitioner to pay the amount of fine and to appear to suffer imprisonment till the rising of the court within the above stipulated time, appropriate steps shall be taken by the trial court, in accordance with law to execute the sentence, forthwith.

Subject to the above, this revision petition is dismissed.

Sd/-

**C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010