

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

Crl.Rev.Pet.No. 263 of 2015 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 326/2013 of ADDITIONAL DISTRICT
AND SESSIONS COURT,MOOVATTUPUZHA DATED 18-09-2014

AGAINST THE JUDGMENT IN ST NO.4841/2010 of JUDICIAL FIRST CLASS
MAGISTRATE COURT,KOLENCHERRY DATED 01-06-2013

REVISION PETITIONER(S):

JOSE JOHN, AGED 45 YEARS
KUNUKKASSERY HOUSE, 27 1100, KIZHAVANA ROAD
PERUMANOOR, ERNAKULAM, COCHIN 682 315.

BY ADVS.SRI.K.C.ELDHO
SRI.JIJO THOMAS
SRI.MALLENATHAN.M.
SRI.ANEESH JAMES
SRI.ANIL R.NATH

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
2. AXIS BANK LIMITED
AXIS BANK (ERSTWHILE UTI BANK) IST FLOOR
CHICAGO PLAZA, RAJAJI ROAD, KOCHI 35
REPRESENTED BY MIDHUN MOHAN, S/O.MOHAN
RESIDING AT JEEBA ROAD, ACHUTHAMENON ENCLAVE
PALLICAL ROAD, THOPPUMPADI, KOCHI 5.

BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 26-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

dlk

C.T.RAVIKUMAR, J

Crl.R.P. No.263 of 2015

Dated this the 26th day of February, 2015

ORDER

This revision petition is filed against the conviction concurrently entered against the petitioner for the offence under section 138 of the Negotiable Instruments Act. The second respondent filed a complaint against the revision petitioner alleging commission of an offence under section 138 of the N.I.Act pursuant to the bouncing of Ext.P1 cheque issued by the revision petitioner for discharging a legally enforceable debt. Since, there is no dispute with respect to the adherence to the statutory procedures by the complainant and there is also no grievances relating the procedures followed by the courts below I do not think it necessary to consider such aspects in detail especially taking into account the fair submission made by the learned counsel appearing for the petitioner that, in the circumstances, the petitioner seeks only some reasonable time to pay the amount remaining to be paid towards the fine imposed by the appellate court for the conviction under section 138 of the N.I.Act. The Assistant Manager of the complainant bank was examined as PW1 and evidently, his oral testimony along with the

documentary evidence consisting of Ext.P1 to P8 were taken into consideration by the trial court and on appreciation of the evidence on record the trial court arrived at the finding that the complainant has succeeded in establishing conclusively the commission of offence under section 138 of the N.I.Act by the revision petitioner. Consequently, he was convicted thereunder and sentenced to undergo imprisonment till the rising of the court and to pay a fine of ₹55,000/-. Default clause was also incorporated. In Crl.A.No.326/2013 filed against the judgment in S.T.No.4841/2010 the appellate court found no reason to interfere either with the conviction or with the sentence. Having heard the learned counsel on both sides and perusing the judgments of the courts below I do not find any reason for invoking the revisional jurisdiction to interfere with the conviction entered against the petitioner for the offence under section 138 of the Negotiable Instruments Act. With respect to the sentence imposed for the conviction under section 138 of the N.I.Act it is to be noted that the petitioner is sentenced only to undergo imprisonment till the rising of the court and to pay a fine of ₹55,000/-. Considering the fact that the amount covered by the cheque dated 5.5.2010 is ₹53,107/- and the fine imposed by the court is only ₹55000/- I do not find any reason for interfering with the sentence imposed for the conviction under

section 138 of the N.I.Act, as well. As noticed hereinbefore, the learned counsel for the petitioner sought only some reasonable time for effecting payment of the amount of fine. The learned counsel appearing for the petitioner submitted that half of the amount (Rs.27,500/-) of fine was already deposited before the trial court on 18.7.2013. In view of the submission and in the circumstances as above while confirming the conviction and the sentence imposed on the petitioner for the offence under section 138, N.I.Act the learned magistrate is directed to keep in abeyance the execution of the sentence for a period of three months to enable the petitioner to deposit the amount of fine and to undergo the sentence of imprisonment till the rising of the court, within the above stipulated period. In case of failure on the part of the petitioner to pay the amount remaining to be paid towards the sentence of payment of fine and to appear before the trial court to undergo the sentence of imprisonment till the rising of the court, within the above stipulated time the trial court shall take appropriate steps for executing the sentence, in accordance with law.

Subject to the above this revision petition is dismissed.

Sd/-

C.T.RAVIKUMAR,JUDGE