

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. 266 of 2015 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 447/2013 of SESSIONS COURT,
PALAKKAD DATED 29-09-2014

AGAINST THE JUDGMENT IN ST 1151/2012 of JUDICIAL FIRST CLASS
MAGISTRATE-II,PALAKKAD DATED 28-11-2013

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

GOPINATH, AGED 55 YEARS
S/O.GOPALAKRISHNAN NAIR, HOUSE NO. 90 (3/213)
PALANKEEZHU HOUSE, KANNADI, PALAKKAD.

BY ADV. SRI.S.MURALI

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 682 035.
2. P.K.SANTHOSH
S/O.KANDUNNI, POOPPALLY HOUSE, KONGAD
PALAKKAD - 678 061.

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. 266 of 2015

Dated this the 26th day of February, 2015

ORDER

This petition is filed under section 138 of the Negotiable Instruments Act for the conviction concurrently entered against the petitioner by the courts below. The second respondent filed a complaint which was taken into file and registered as S.T.No.1151/2012 alleging that Ext.P1 cheque issued by the revision petitioner in discharge of a legally enforceable debt of ₹5,00,000/- was bounced owing to paucity of fund in the account maintained by the revision petitioner. This revision petition is filed after complying with all the statutory procedures and formalities and no dispute has been raised in that regard. To bring home the charge against the revision petitioner the complainant got himself examined as PW1 and Exts.P1 to P5 were got marked. All the incriminating circumstances were put to the accused while being examined under section 313 of the Code of Criminal Procedure and he denied all such circumstances. On the side of the revision petitioner the Manager of the Kannadi Branch of State of Bank of Travancore was examined as DW1 and Ext.D1 was got marked. In fact, the revision petitioner did

not mount the box to adduce evidence. After evaluation of the evidence the trial court found that the complainant has succeeded in establishing conclusively the commission of offence under section 138 of the N.I.Act by the revision petitioner. Accordingly, he was convicted thereunder and sentenced to undergo imprisonment till the rising of the court and to pay a compensation of ₹5,00,000/- to the complainant under section 357(3) of the Code of Criminal Procedure. In default of payment of compensation he was sentenced to undergo simple imprisonment for three months. The petitioner filed Crl.A.No.447/2013 challenging the judgment in S.T.1151/2012. However, after a careful appreciation of the evidence the appellate court found such contentions raised by the petitioner as meritless and consequently confirmed the the conviction as also the sentence. It is in the said circumstances that this revision petition has been filed.

2. I have heard the learned counsel for the petitioner.

3. As noticed hereinbefore, there is concurrent conviction and sentence under section 138 of the N.I.Act against the revision petitioner. In such circumstances, in order to make this

Court to invoke the revisional jurisdiction the petitioner has either to establish that the appreciation of the evidence by the courts below are utterly perverse or that the conclusions arrived at were totally against the weight of the evidence. Such interference is also possible in case of error in law. Having heard the learned counsel for the petitioner and perusing the judgment I have no hesitation to hold that no such grounds inviting an interference in exercise of the revisional jurisdiction have been made out by the revision petitioner. In such circumstances, there is absolutely no scope for interfering with the conviction entered concurrently against the petitioner for the offence under section 138 of the N.I.Act. In the said circumstances, the conviction of the petitioner for the offence under section 138 of the N.I.Act is confirmed. The substantive sentence imposed against the petitioner for the commission of the offence under section 138 is only imprisonment till the rising of the court. Evidently, the compensation directed to be paid by the petitioner under section 357(3) is only the amount covered by the cheque in question. Ext.P1 cheque is dated 24.11.2011. True that, a default clause making the petitioner to undergo simple imprisonment for

three months in case default of payment of compensation was also incorporated. Taking into account such aspect I do not find any scope for interfering with the sentence imposed for the offence under section 138 of the N.I.Act against the petitioner. In such circumstances the sentence imposed for the conviction under section 138 of the N.I.Act is also liable to be confirmed. Holding such a view when this Court was about to dismiss this revision petition the learned counsel appearing for the petitioner submitted that some reasonable time may be granted to the revision petitioner to pay the amount of compensation. Considering the said submissions the learned magistrate is directed to keep in abeyance execution of the sentence as also all steps for recovering the amount of compensation ordered under section 357(3) of the Cr.P.C for eight months so as to enable the petitioner to deposit the said amount and to appear before the trial court to suffer the sentence of imprisonment till the rising of the court within the above stipulated period. It is made clear that in case of failure on the part of the petitioner to pay the amount of compensation and also to surrender before the court to undergo sentence of imprisonment till the rising of the court, within

the above stipulated time the learned magistrate shall take appropriate steps, in accordance with law.

Sd/-

C.T.RAVIKUMAR,JUDGE.

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