

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

Crl.Rev.Pet.No. 288 of 2015 ()

AGAINST THE JUDGMENT IN CRA 652/2011 of COURT OF ADDL. DISTRICT &
SESSIONS JUDGEV - VIII, ERNAKULAM DATED 25-11-2014

AGAINST THE JUDGMENT IN CC 683/2010 of COURT OF JUDICIAL FIRST CLASS
MAGISTRATE-II, KOCHI DATED 18.10.2011

REVISION PETITIONER/APPELLANT IN CRL.APPEAL/ACCUSED IN CC :

ABU P.E, AGED 53 YEARS
S/O. IBRAHIMKUTTY, CHANDINI,
SHOORANADI P.O., ERNAKULAM.

BY ADVS.SRI.R.SURAJ KUMAR
SRI.SUNIL J.CHAKKALACKAL
SMT.V.BEENA
SMT.V.DEEPA

RESPONDENTS/STATE/1ST RESPONDENT IN CRL.APPEAL/COMPLAINANT IN CC :

1. AJITH KUMAR A.V., AGED 33 YEARS
S/O. VASUDEVAN EMBRATHIRI, SAJI NIVAS, PALLURUTHY
KOCHI.

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.

R2 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 02-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.R.P.No.288 of 2015

Dated 2nd March, 2015

ORDER

This revision petition is directed against the conviction of the revision petitioner under Section 255(2) of the Code of Criminal Procedure for the offence under Section 138 of the Negotiable Instruments Act concurrently entered against him by the courts below. The revision petitioner herein was the accused and the first respondent herein was the complainant in C.C.No.683 of 2010. The first respondent filed the complaint stating that the revision petitioner herein issued Ext.P1 cheque dated 18.11.2009 in discharge of a legally enforceable debt of ₹ 27,700/-. The said cheque on presentation was dishonoured due to paucity of funds in the account maintained by the revision petitioner. There is no case for the revision petitioner that the first respondent-complainant filed the complaint without complying with the statutory formalities. So also there is no grievance for the revision petitioner regarding the procedures adopted by the courts below in the matter of disposal of the case. To bring home the charge against the revision petitioner the first respondent got himself examined as PW1 and got marked

Exts.P1 to P6. The revision petitioner denied all the incriminating circumstances while being examined under Section 313, Cr.P.C. He adduced defence evidence consisting of his own oral testimony as DW1 and the documentary evidence in Exts.D1 to D3. On a careful evaluation of the evidence on record the trial court found that the first respondent has succeeded in proving the commission of offence under Section 138 of the Negotiable Instruments Act by the revision petitioner conclusively. For the conviction thereunder he was sentenced to undergo simple imprisonment for one month and to pay an amount of Rs.30,000/- which on realisation was directed to be paid to the complainant as compensation under Section 357(3) Cr.P.C. The revision petitioner was also directed to undergo simple imprisonment for a further period of one month in case of his default in effecting payment of the amount of compensation. The petitioner unsuccessfully took up the matter before the appellate court in Crl.A.No.652 of 2011. The appellate court on re-appreciation of the evidence on record found no merit in the contentions raised by the petitioner to mount challenge against the aforesaid judgment and consequently confirmed the conviction entered against the revision petitioner for the offence under Section 138 of N.I. Act. At the same time, the appellate court modified the substantive sentence imposed on the revision petitioner as imprisonment till the rising of the court. The direction to pay compensation as also the default clause

were maintained. This revision petition is filed in the said circumstances.

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

3. Evidently, conviction was entered against the revision petitioner for the offence under Section 138 of the Negotiable Instruments Act concurrently by the courts below. In such circumstances, interference in exercise of revisional jurisdiction is required only in a case where the petitioner succeeds in establishing that there is utter perverse appreciation of the evidence or that the conclusions arrived at by the courts below are totally against the weight of evidence. Though I have carefully considered the grounds in the revision petition and also the arguments advanced by the learned counsel for the revision petitioner I have no hesitation to say that the revision petitioner has failed to bring out any such case warranting interference in exercise of the revisional jurisdiction though the learned counsel for the revision petitioner attempted to canvass the position that his evidence as DW1 with respect to the amount payable was not properly considered. Evidently, the attempt of the revision petitioner is to make this Court to re-appreciate the evidence. A perusal of the judgments of the trial court as also the appellate court would reveal that

the contentions now advanced by the petitioner were properly considered by the courts below and it is evident that based on the evidence on record a plausible finding was arrived at by the courts below. In such circumstances, merely because another view is also possible on the evidence, exercise of the revisional jurisdiction to substantiate the findings is impermissible in law. In short, I do not find any reason to interfere with the conviction entered against the revision petitioner for the offence under Section 138 of the Negotiable Instruments Act by the courts below. In the circumstances, the conviction of the revision petitioner for the offence under Section 138 of N.I. Act is confirmed.

4. The question now survives for consideration is whether there is any scope for interference against the sentence imposed against the revision petitioner for the conviction for the offence under Section 138 of N.I. Act. I have already taken note of the sentence imposed by the trial court on the revision petitioner under Section 138 of N.I. Act. Obviously, taking note of the settled position that in a case of dishonour of cheque the pecuniary aspect has to be given priority over the punitive aspect the appellate court modified the sentence. The substantive sentence of imprisonment for one month was modified and it was reduced to imprisonment till the rising of the court. The amount directed to be paid as compensation is ₹ 30,000/-. In this context it is to be noted

that the amount covered by Ext.P1 cheque in question is ₹ 27,700/- and it is dated 18.11.2009. In such circumstances, I am of the view that the sentence imposed on the revision petitioner calls for no further interference. Accordingly, the sentence imposed by the appellate court for the offence under Section 138, N.I. Act is confirmed. When this Court was about to dismiss this revision petition without any qualification the learned counsel for the revision petitioner submitted that some reasonable time may be granted to the petitioner to pay the amount of compensation. Taking note of the submissions by the learned counsel I am inclined to direct the learned Magistrate to keep in abeyance the execution of the sentence and also initiation of steps for recovering the amount of compensation for a period of six months. Ordered accordingly. It is made clear that in case of failure on the part of the revision petitioner to effect payment of compensation and to appear before the trial court to undergo the sentence of imprisonment till the rising of the court, within the above stipulated period, the trial court shall take appropriate steps in accordance with law, expeditiously.

Subject to the above this revision petition is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS