

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 17TH DAY OF APRIL 2015/27TH CHAITHRA, 1937

Crl.Rev.Pet.No. 289 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN CRA 109/2013 of D.C. & SESSIONS
COURT,KOLLAM DATED 07-01-2015

AGAINST THE ORDER/JUDGMENT IN ST 879/2011 of J.M.F.C.-I,KOTTARAKKARA
DATED 28-02-2013

REVISION PETITIONER/APPELLANT/ACCUSED:

OMANAKUTTAN PILLAI
S/O. MADHAVAN PILLAI, MAVELITHOTTATHIL VEEDU
KUZHIMATHIKADU MURI, KAREEPRA VILLAGE
KOTTARAKARA TALUK, KOLLAM DISTRICT.

BY ADV. SRI.K.V.ANIL KUMAR

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

1. VIJAYAKUMARI G.
LEKSHMI NIVAS, KUZHIMATHIKADU MURI, KAREEPRA VILLAGE
KOTTARAKARA TALUK, KOLLAM DISTRICT - 691 521.

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

R1 BY ADV. SMT.S.K.DEVI
R1 BY ADV. SRI.SANTHOSH P.ABRAHAM
R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 17-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.R.P.No.289 of 2015

Dated 17th April, 2015

ORDER

This revision petition is directed against the judgment in Crl.A.No.109 of 2013 of the Court of Sessions Judge, Kollam confirming the conviction and modifying the sentence imposed on the petitioner in S.T.No.879 of 2011 of the Court of Judicial First Class Magistrate-I, Kottarakkara. The petitioner was tried for the offence punishable under Section 138 of the Negotiable Instruments Act. The allegation of the first respondent/complainant is that the revision petitioner borrowed an amount of ₹ 4,00,000/- from her. The revision petitioner issued Ext.P1 cheque in discharge of the said legally enforceable liability. But, when the complainant presented the cheque for encashment the same was dishonoured for the reason 'account closed'. Thereupon, the complainant issued a notice intimating the revision petitioner of the dishonour of the cheque and calling upon him to pay the amount due. It is the failure on the part of the revision petitioner to effect payment of the amount within the statutorily prescribed period that constrained the complainant to file the complaint which was taken on file and numbered as S.T.No.879 of

2011. On due process the revision petitioner appeared before the court and the particulars of the charge were read over and explained to him and the revision petitioner pleaded not guilty. The complainant got herself examined as PW1 and got marked Exts.P1 to P5 to establish the charge against the revision petitioner. On the closure of the evidence of the complainant the revision petitioner herein was examined under Section 313, Cr.P.C. and denied all the incriminating circumstances put to him. 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 herein has committed the offence under Section 138 of the Negotiable Instruments Act. Consequently, he was convicted thereunder and sentenced to undergo simple imprisonment for a period of one month besides directing him to pay a compensation of ₹ 4,00,000/- to the complainant under Section 357(3) Cr.P.C. and in default of payment of compensation to undergo simple imprisonment for a further period of three months. The revision petitioner took up the matter in appeal as CrI.A.No.109 of 2013 before the Court of Sessions Judge, Kollam. Various contentions were raised against the judgment of the trial court. However, the learned Sessions Judge found no ground to invoke the appellate

jurisdiction. It was found 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 rising of the court. The direction to pay ₹ 4,00,000/- as compensation to the complainant under Section 357(3) Cr.P.C. and in default of payment of compensation to undergo simple imprisonment for a further period of three months were maintained by the appellate court. The captioned revision petition has been filed against the said judgment confirming the conviction and modifying the sentence as aforesaid.

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

3. As noticed hereinbefore, conviction was concurrently entered against the revision petitioner by the courts below for the offence under Section 138 of the N.I. Act. In such circumstances, an interference 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 are utterly perverse or that the conclusions

reached are totally against the weight of the evidence on record. 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 made out by the revision petitioner to compel this Court to exercise the revisional jurisdiction to interfere with the concurrent finding of conviction entered against him. No error in law was also brought to my notice. Virtually, the revision petitioner took up only the contentions which were unsuccessfully raised before the appellate court. In the said circumstances, the conviction entered against the revision petitioner under Section 138 of the Negotiable Instruments Act is liable to be confirmed and accordingly, it is confirmed.

4. Obviously, the trial court sentenced the petitioner to undergo simple imprisonment for a period of one month and he was also directed to pay an amount of ₹ 4,00,000/- as compensation to the complainant under Section 357(3) Cr.P.C. and in default of payment of compensation to undergo simple imprisonment for a further period of three months. After careful evaluation of the circumstances the appellate court interfered with the sentence and modified it. The substantive sentence to undergo simple imprisonment for one month was

reduced to simple imprisonment till rising of the court. However, the direction to pay ₹ 4,00,000/- as compensation to the complainant under Section 357(3) Cr.P.C. and in default of payment of compensation to undergo simple imprisonment for a further period of three months were maintained. Ext.P1 cheque is dated 24.10.2010 and the cheque amount is ₹ 4,00,000/-. In the 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 as, according to me, it is the condign punishment for the offence. Hence, it is also liable to be confirmed and accordingly, it is 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 revision petitioner while dismissing this revision petition I am inclined to direct the learned Magistrate to keep in abeyance execution of the sentence of payment of compensation for a period of eight months to enable the revision petitioner to pay the same. Ordered accordingly. Within the stipulated period the revision petitioner shall pay the amount and appear before the trial court to undergo imprisonment till rising of the court. In case of failure on the part of the revision petitioner to pay the amount of

compensation within the above stipulated time and to appear before the court to undergo imprisonment till rising of the court the learned Magistrate shall take appropriate steps for execution of the sentence, in accordance with law.

Subject to the above, this revision petition is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS