

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

Crl.Rev.Pet.No. 304 of 2015 ()

**AGAINST THE JUDGMENT IN CRL.A.NO.71/2011 of II ADDL. SESSIONS
COURT,TRIVANDRUM DATED 25-08-2014**

**AGAINST THE JUDGMENT IN S.T.NO. 2419/2007 of JUDICIAL FIRST CLASS
MAGISTRATE COURT - II, VARKALA DATED 31-01-2011**

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**KUTTAPPAN,
S/O.SIVANANDAN, KATTIL VEEDU, PUTHEN CHANTHA,
VARKALA.**

**BY ADVS.SRI.S.K.BALACHANDRAN
SRI.V.K.NANDAKUMARAN
SMT.N.D.DEEPA**

RESPONDENT(S)/COMPLAINANT & STATE:

**1. THYAGARAJAN,
S/O.GANGADHARAN, SHEEBA NIVAS, PUTHEN CHANTHA,
VARKALA - 695 141.**

**2. THE 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
05-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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K. Ramakrishnan, J.

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Crl.R.P.No.304 of 2015

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Dated this, the 05th day of March, 2015.

O R D E R

Accused in S.T.No.2419/2007 on the file of the Judicial First Class Magistrate Court - II, Varkala is the revision petitioner herein.

2. The case was taken on file on the basis of a private complaint filed by the first respondent against the revision petitioner alleging offence under Section 138 of the Negotiable Instruments Act (hereinafter called 'the Act').

3. The case of the complainant in the complaint was that the revision petitioner borrowed a sum of Rs.2,00,000/- on 03.05.2007 and in discharge of that liability, he had issued Ext.P1 cheque dated 07.05.2007 drawn on State Bank of Travancore, Varkala branch in favour of the complainant which when presented was dishonoured for the reason 'funds insufficient' evidenced by Ext.P2 dishonour memo. The complainant issued Ext.P4 notice dated 23.10.2007 on the same day vide Ext.P3 postal receipt and the same was received by the revision petitioner evidenced by Ext.P5 postal acknowledgment. He had not paid the amount. So, he had

committed the offence punishable under Section 138 of the Act. Hence the complaint.

4. When the revision petitioner appeared before the court below, the particulars of offence were read over and explained to him and he pleaded not guilty. In order to prove the case of the complainant, the complainant himself was examined as PW1 and Exts.P1 to P5 were marked on his side. After closure of the complainant's evidence, the revision petitioner was questioned under Section 313 of Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the complainant's evidence. He had further stated that, both the complainant and revision petitioner were having shops adjacent to each other at Pazhayachantha and he had some how obtained his cheque in the year 2003 and this was misused and the present complaint was filed. No defence evidence was adduced on his side.

5. After considering the evidence on record, the court below found the revision petitioner guilty under Section 138 of the Act and convicted him thereunder and sentenced him to undergo simple imprisonment for two months and also to pay

an amount of Rs.2,10,000/- as compensation in default to undergo simple imprisonment for one month under Section 357(3) of Code of Criminal Procedure. Aggrieved by the same, he filed Crl.Appeal.No.71/2011 before the Sessions Court, Thiruvananthapuram which was made over to IInd Additional Sessions Court, Thiruvananthapuram for disposal and the learned Additional Sessions Judge allowed the appeal in part confirming the order of conviction and converted the compensation to fine and enhanced the default sentence to three months and reduced the substantive sentence to imprisonment till rising of court. Aggrieved by the same, the present revision has been filed by the revision petitioner – accused before the court below.

6. Considering the nature of defence raised and scope of enquiry, this court felt that the revision can be disposed of at the admission stage itself after hearing the Counsel for the revision petitioner and the Public Prosecutor and dispensing with notice to the first respondent.

7. The Counsel for the revision petitioner submitted that the courts below have not properly appreciated the evidence and he had proved his case by preponderance of

probabilities which alone is required to discharge the burden cast on him. He had also submitted that in case, this court is not inclined to interfere with the findings of the court below, he prayed for six months time to pay the amount.

8. The learned Public Prosecutor supported the concurrent findings of the court below.

9. The case of the complainant was that, revision petitioner borrowed a sum of Rs.2,00,000/- and in discharge of that liability, he had issued Ext.P1 cheque. The case of the revision petitioner was one of total denial and his case was that the cheque some how obtained was misused and the present complaint was filed. In order to prove the case of the complainant, the complainant himself was examined as PW1 and he deposed in support of his case in the complaint. Though he was cross examined at length, nothing was brought out to discredit his evidence on this aspect. Though the revision petitioner received the notice, he did not send any reply to the notice issued by the complainant when the cheque was dishonoured. Further, he did not take any action against the complainant for the alleged theft of the cheque when he came to know about the same. Under the circumstances, the

defence put forwarded by the revision petitioner is unbelievable and improbable and rightly rejected by the court below and believing the evidence of PW1 and also the documents produced, the court below had rightly come to the conclusion that the revision petitioner had committed the offence punishable under Section 138 of the Act and rightly convicted him for the offence alleged. The concurrent findings of the court below on this aspect do not call for any interference.

10. As regards the sentence is concerned, though the learned magistrate has sentenced him to undergo simple imprisonment for two months and also to pay an amount of Rs.2,10,000/- to the complainant as compensation in default to undergo simple imprisonment for one month under Section 357(3) of Code of Criminal Procedure, the same was modified by the appellate court by sentencing him to undergo imprisonment till rising of court and also to pay a fine of Rs.2,10,000/- in default to undergo simple imprisonment for three months and directed the fine amount if realised to be paid to the complainant as compensation under Section 357(1) (b) of Code of Criminal Procedure. Maximum leniency has

been shown by the appellate court in imposing the sentence as well which cannot be said to be excessive or harsh. The case is of the year 2007. Considering the amount involved, this court feels that some leniency can be shown in payment of the amount. Six months time is granted to the revision petitioner to pay the amount. So, the revision petitioner is granted time till 05.09.2015 to pay the amount. Till then, the execution of sentence is directed to be kept in abeyance.

With the above direction and observation, the revision petition is dismissed.

Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.Ramakrishnan, Judge.

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[True copy]

P.A to Judge