

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

Crl.Rev.Pet.No. 321 of 2015 ()

AGAINST THE JUDGMENT IN CrI. APPEAL 157/2013 of ADDL. SESSIONS COURT - IV,
KOTTAYAM, DATED 31-10-2014

&

AGAINST THE JUDGMENT IN ST 20/2012 of J.M.F.C.-II,
VAIKOM, DATED 08-04-2013

REVISION PETITIONER(S)/PETITIONER:

JESWIN ELIAS, AGED 42 YEARS,
W/O.ELIAS, VALIYAPARAMBIL HOUSE, SOUTH PARAVOOR P.O.,
UDAYAMPEROOR VILLAGE, KANAYANNOOR TALUK.

BY ADV. SRI.DILISH JOHN

RESPONDENT(S)/RESPONDENTS:

-
1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
 2. K.A.NOUSHAD, AGED 43 YEARS,
S/O. ISMAIL HAJI, DARULAMAL HOUSE, CHEMBU KARA,
CHEMBU VILLAGE, VAIKOM TALUK.

R1 BY PUBLIC PROSECUTOR SRI. N. SURESH.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
06-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SS

K. RAMAKRISHNAN, J.

Crl. R.P.No.321 of 2015

Dated this the 6th day of March, 2015

ORDER

Accused in S.T.No.20/2012 on the file of the Judicial First Class Magistrate Court-II, Vaikom, is the revision petitioner herein. The case was taken on file on the basis of a private complaint filed by the second respondent alleging offence under Section 138 of Negotiable Instruments Act (hereinafter called the 'Act').

2. The case of the complainant in the complaint was that accused borrowed a sum of ₹1,50,000/- and in discharge of that liability, she had issued Ext.P1 cheque, which when presented was dishonoured for the reasons 'funds insufficient' evidenced by Ext.P2 dishonour memo and the same was intimated to the complainant by his banker with Ext.P3 intimation letter. The complainant issued Ext.P4 notice vide Ext.P5 postal receipt and the same was received by the revision petitioner evidenced by

Ext.P6 postal acknowledgment. He had not paid the amount. So he had committed the offence punishable under Section 138 of the Negotiable Instruments Act.

3. 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 P6 were marked on his side. After closure of the complainant's evidence, the revision petitioner was questioned under Section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the complainant's evidence. He had further stated that, there was no transaction between them and the cheque given as security in a property transaction has been misused. In fact the construction of the house was entrusted to the 2nd respondent and as a security for the same, the cheque has been given, which was misused and the present complaint

was filed.

4. In order to prove his case, he produced Ext.D1 agreement. No other evidence was adduced on the side of the revision petitioner. After considering the evidence on record, the court below found the revision petitioner guilty under Section 138 of the Negotiable Instruments Act and convicted him thereunder and sentenced him to undergo simple imprisonment for six months and also to pay ₹1,50,000/- as compensation to the complainant, in default to undergo simple imprisonment for six months more under Section 357(3) of the Code of Criminal Procedure. Aggrieved by the same, he filed Crl. Appeal 157/2013 before the Sessions Court, Kottayam, which was made over to 4th Additional Sessions Court, Kottayam, for disposal, and the learned Additional Sessions Judge considering the fact that ₹75,000/- was paid during the pendency of the appeal, allowed the appeal in part, confirming the order of conviction, but reduced the

substantive sentence of imprisonment, till rising of the court and also compensation ₹75,000/- with default sentence of three months under Section 357(3) of the Code of Criminal Procedure. Dissatisfied with the same, the present revision has been filed by the revision petitioner/ accused before the court below.

5. When the revision petition came up for hearing, the counsel for the revision petitioner wants only time and he prayed six months time for payment of the amount. Considering the 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 learned Public Prosecutor, dispensing with notice to the second respondent.

6. On going through the discussions of the courts below regarding the evidence adduced, it is seen that, except producing Ext.D1, no other evidence was adduced on the side of the revision petitioner to prove that

Ext.P1 cheque was given as a blank signed cheque, as security for the transaction covered by Ext.P1. In the absence of such evidence, the courts below were perfectly justified in relying on the evidence of PW1 and other documentary evidence adduced, rightly came to the conclusion that the revision petitioner had committed the offence punishable under Section 138 of the Negotiable Instruments Act and convicted the revision petitioner for the said offence and the concurrent findings of the court below on this aspect do not call for any interference.

7. As regards the sentence is concerned, court below had sentenced him to undergo simple imprisonment for six months and also to pay the cheque amount of ₹1,50,000/- to the complainant, in default to undergo simple imprisonment for six months more under Section 357(3) of the Code of Criminal Procedure and the appellate court, considering the fact that ₹75,000/- was paid during the pendency of the appeal, reduced the substantive sentence

of imprisonment till rising of the court and compensation to ₹75,000/-, and default sentence to three months. Maximum leniency has been shown in imposing the sentence by the appellate court, which cannot be said to be excessive or harsh, warranting interference at the hands of this court.

Considering the amount involved, this court feels that, time sought for by the petitioner can be granted. So the revision petitioner is granted six months time to pay the amount. Revision petitioner is directed to pay the amount on or before 06.09.2015, till then, the execution of sentence is directed to be kept in abeyance.

With the above direction and observation, the revision petition is dismissed and disposed of accordingly. Office is directed to communicate this order to the concerned court, immediately.

Sd/-

K. RAMAKRISHNAN, (Judge)

// True Copy//

P.A. to Judge