

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

Crl.Rev.Pet.No. 343 of 2015 ()

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AGAINST THE JUDGMENT IN CRA 144/2013 of COURT OF ADDITIONAL  
DISTRICT & SESSIONS JUDGE, NORTH PARAVUR DATED 07-08-2014

AGAINST THE JUDGMENT IN CC 128/2012 of COURT OF JUDICIAL FIRST CLASS  
MAGISTRATE - II, PERUMBAVOOR DATED 04-02-2013

REVISION PETITIONER/APPELLANT/ACCUSED :

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JEBY M.A., AGED 35 YEARS  
S/O. M.S.ALIYAR, MURINGASSERY HOUSE  
EDATHALA NORTH P.O., ALUVA. (PROPRIETOR  
VENPAKKAL AGENCIES, CHAKKAI, THIRUVANANTHAPURAM).

BY ADVS.SRI.P.K.IBRAHIM  
SMT.K.P.AMBIKA  
SMT.A.A.SHIBI

RESPONDENTS/RESPONDENTS NO.2 & 1/STATE & COMPLAINANT:

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

2. M/S. P.B.ELECTRICALS , KOOVAPPADY,  
REPRESENTED BY ITS PROPRIETOR, BIJI GEORGE  
AGED 38 YEARS, S/O. GEORGE, PONTHENBILLY HOUSE,  
THOTTUVA, KOOVAPPADY, PIN-683 544.

R2 BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)  
R2 BY ADV. SRI.GEORGE VARGHESE KIZHAKKAMBALAM  
R1 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION  
ON 13-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**C.T.RAVIKUMAR, J.**

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Crl.R.P.No.343 of 2015  
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Dated 13<sup>th</sup> March, 2015

**ORDER**

The revisionist is convicted under Section 138 of the Negotiable Instruments Act. He was tried for the said offence in C.C.No.128 of 2012 before the court of Judicial First Class Magistrate-II, Perumbavoor. Upon finding guilty he was sentenced to undergo simple imprisonment for three months and he was also directed to pay a compensation of ₹ 1,00,000/- with interest at the rate of 9% per annum viz., ₹ 1,27,750/- to the complainant under Section 357(3) Cr.P.C. In default of payment of compensation he was directed to undergo simple imprisonment for a further period of one month. The revision petitioner preferred Crl.A.No.144 of 2013 challenging the conviction and sentence. However, the appellate court found no merit in the various contentions raised by the revision petitioner herein and ultimately confirmed the conviction but, at the same time, modified the sentence. The substantive sentence to undergo simple imprisonment for a period of three months was reduced to imprisonment till rising of the court. The direction to pay the amount of compensation as mentioned hereinbefore was maintained. The default clause was also interfered with and the revision petitioner was

directed to undergo simple imprisonment for three months in case of failure to pay the amount of compensation. This revision petition is directed against the judgment in the said Criminal Appeal.

2. I have heard the learned counsel for the revision petitioner, the learned counsel appearing for the 2<sup>nd</sup> respondent and also the learned Public Prosecutor.

3. Obviously, conviction under Section 138 of N.I. Act was concurrently entered against the revision petitioner based on the oral testimony of the 2<sup>nd</sup> respondent herein as PW1 and the documentary evidence in Exts.P1 to P6. In a case of concurrent conviction to interfere with the same in exercise of the revisional jurisdiction the revisionist has to establish that the courts below appreciated the evidence in an utterly perverse manner or that the conclusions arrived at by the courts below are totally against the weight of the evidence. Having heard the learned counsel on both sides and perusing the judgments I have no hesitation to hold that the revision petitioner has failed to make out any ground whatsoever so as to compel this Court to interfere with the conviction in exercise of revisional jurisdiction. Having perused the judgments of the courts below I do not find any reason to interfere with the conviction

entered against the revision petitioner under Section 138 of N.I. Act concurrently by the courts below. Hence, the conviction is confirmed.

4. I have already taken note of the sentence imposed by the trial court on the revision petitioner for the conviction under Section 138 of N.I. Act. Evidently, the substantive sentence imposed on the petitioner was interfered by the appellate court and the appellate court reduced it into imprisonment till the rising of the court. The amount covered by the cheque in question is ₹ 1,00,000/-. For the purpose of computing the amount of compensation to be paid to the complainant the trial court considered as to what exactly is the interest payable at the rate of 9% for the amount of ₹ 1,00,000/- from the date of the cheque till the date of passing of the order. The amount of ₹ 27,750/- was arrived at based on such computation. Such a method was adopted by the trial court presumably to compensate the 2<sup>nd</sup> respondent for the loss he has sustained on account of the act for which the revision petitioner herein was sentenced and therefore, he is entitled to a compensation under Section 357(3) Cr.P.C. In the circumstances mentioned above, I do not find any reason to interfere with the sentence imposed on the revision petitioner for the conviction under Section 138, N.I. Act. Accordingly, the sentence imposed against the revision petitioner for the

conviction under Section 138 of N.I. Act is also liable to be confirmed and accordingly, it is confirmed. Holding such a view when this court was about to dismiss this matter the learned counsel for the revision petitioner submitted that some reasonable time may be granted to the revision petitioner to pay the amount of compensation. Upon hearing the learned counsel on both sides I am of the view that appropriate directions can be given to the learned Magistrate in that regard. Accordingly, the learned Magistrate is directed to keep in abeyance the execution of the sentence as also the steps to effect recovery of compensation in accordance with law, for a period of four months so as to enable the revision petitioner to deposit the said amount and to appear before the court to undergo imprisonment till rising of the court within the above stipulated time. Needless to say that in case of failure on the part of the revision petitioner to pay the said amount and to appear before the trial court to undergo imprisonment, within the above stipulated time, the learned Magistrate shall take appropriate steps in accordance with law, forthwith.

Subject to the above, this revision petition is dismissed.

Sd/-  
C.T.RAVIKUMAR  
Judge

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