

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

Crl.Rev.Pet.No. 358 of 2015 ()

JUDGMENT IN CRA 299/2013 OF ADDITIONAL SESSIONS COURT (SPL. COURT),
KOTTAYAM DATED 16-01-2015

JUDGMENT IN ST 81/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT- V,
KOTTAYAM DATED 01-08-2013

REVISION PETITIONER(S)/APPELLANT/ACCUSED :

MANOJ.P.JOY
S/O. JOY, PARAPARMBIL HOUSE, THRIKKOTAMANGALAM P.O.
PUTHUPPALLY, KOTTAYAM DISTRICT.

BY ADV. SRI.C.S.SUNIL

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

1. RAJAGOPALAN CHETTIYAR
THAITHARAYIL HOUSE, MEENADAM VILLAGE
KOTTAYAM DISTRICT.
2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.

R BY PUBLIC PROSECUTOR SRI. N. SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 23-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

C.T. RAVIKUMAR, J.

Crl. R.P. No.358 of 2015

Dated this the 23rd day of March, 2015.

ORDER

This revision petition is directed against the conviction concurrently entered against the revision petitioner under Section 138 of the Negotiable Instruments Act. The petitioner was tried for the said offence in S.T.No.81 of 2013 of the Court of the Judicial First Class Magistrate-V, Kottayam and he was found guilty thereunder. Consequently, he was convicted thereunder and sentenced to undergo simple imprisonment for one day till the rising of court. He was also directed to pay a compensation of Rs.2,50,000/- to the complainant under Section 357(3) of Cr.P.C. In case of failure to pay the amount of compensation, the revision petitioner was directed to undergo simple imprisonment for a further period of six months. Aggrieved by the same, the petitioner preferred Crl.A.No.299 of 2013. The appellate court considered the contentions raised for mounting challenge against the

judgment in S.T.No.81 of 2013 and found them meritless. Consequently, the appellate court confirmed the conviction as also the sentence imposed by the trial court. This revision petition is filed in the said circumstances.

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

3. As stated herein before, the revision petitioner was convicted concurrently under Section 138 of the Negotiable Instruments Act and for the conviction thereunder he was sentenced as aforesaid. In such circumstances, when there is concurrent conviction in order to compel this Court to invoke the revisional jurisdiction, the revision petitioner has to make out a case of an utter perverse appreciation of evidence by the court. However, the said ground or any other permissible ground has been brought out by the revision petitioner. In this case, to bring home the charge against the revision petitioner, the complainant/the first respondent got himself examined as PW1 and got marked Exts. P1 to P6. After the closure of

the evidence of the complainant, the petitioner was examined under Section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances. However, the revision petitioner has not chosen to mount the box and he has only adduced documentary evidence viz; Exts. D1 to D3. It is after evaluating the evidence on record, as mentioned above, that the trial court arrived at a conclusion that the first respondent/complainant has succeeded in establishing commission of offence under Section 138 of the Negotiable Instruments Act by the revision petitioner conclusively and the conviction and sentence followed such a finding. The appellate court re-appreciated the evidence as is evident from the impugned judgment. It is evident from the same that despite such perusal of the records with application of mind, the appellate court had not found any ground for interference and consequently the conviction was confirmed. It was found that the evidence of PW1 with Exts.P1 to P6 conclusively establishes the commission of offence under Section 138 of the

N. I. Act by the revision petitioner. Besides the contentions unsuccessfully urged before the appellate court, no other permissible grounds were made out by the revision petitioner. Virtually, the petitioner seeks for re-appreciation of evidence. When the petitioner has failed to bring out any ground to make this Court to invoke the revisional jurisdiction to interfere with the conviction concurrently entered against the revision petitioner under Section 138 of the N.I.Act, interference is impermissible. In the said circumstance, the conviction of the revision petitioner under Section 138 of the N.I. Act is liable to be confirmed and it is accordingly dismissed.

4. The next question to be considered is whether the sentence imposed for the conviction under Section 138 of the N.I. Act, call for any interference. Evidently, after convicting the revision petitioner under Section 138 of the Negotiable Instruments Act, the trial court sentenced him only to undergo simple imprisonment for one day till the rising of the court. Evidently, the appellate court found that the court below had

taken a liberal view in awarding the said substantive sentence. I do not find any reason to hold otherwise. Evidently, the amount directed to be paid as compensation to the complainant under Section 357(3) of Cr.P.C, is the amount covered by Ext.P1 cheque. In the light of the provisions under Section 357(3) of Cr.P.C., direction to pay such compensation cannot be said to be illegal and it is legal and permissible. I do not find any reason to interfere with the sentence imposed for the conviction under Section 138 of the N.I.Act, concurrently imposed by the courts below. In the said circumstance, the sentence imposed on the petitioner further conviction under Section 138 of the N.I.Act, is also liable to be confirmed. Accordingly it is confirmed.

5. When this Court was about to dismiss this revision petition without any qualification, the learned counsel appearing for the revision petitioner submitted that some reasonable time may be granted to the revision petitioner to pay the amount of compensation. It is submitted that the

revision petitioner is a person having physical disability of more than 50%. In the interest of justice, the learned Magistrate is directed to keep in abeyance the execution of the sentence and also the steps for recovering the amount of compensation for a period of six months to enable the petitioner to pay the amount of compensation and to appear before the court to undergo the imprisonment till rising of the court within the above stipulated time.

Needless to say that in case of his failure to do so, the trial court shall take appropriate action in accordance with law. Subject to the above, this revision petition is dismissed.

**Sd/-
C.T. RAVIKUMAR
JUDGE**

Scl.