

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

Crl.Rev.Pet.No. 360 of 2015 ()

**AGAINST THE JUDGMENT IN CrI.APPEAL 279/2013 of II ADDL. SESSIONS COURT,
PALAKKAD, DATED 14.01.2015**

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**AGAINST THE JUDGMENT IN CC 80/2010 of J.M.F.C.- III, PALAKKAD,
DATED 12.08.2013**

REVISION PETITIONER(S):

**C.GIRISH, AGED 35 YEARS,
S/O. CHERUKUTTY,
PUTHENPALLAM HOUSE,
VAKKANICHALLA,
KUTTIPPALLAM,
PALAKKAD.**

BY ADV. SRI. K.ANAND

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA - 682 031.**
- 2. M.S. SASI, S/O. SUKUMARAN, AGED 53 YEARS,
KAVUNGAL HOUSE,
KINASSERY, PALAKKAD-678 103.**

R1 BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN.

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
18-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

SS

K. RAMAKRISHNAN, J.

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Crl. R. P. No.360 of 2015

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Dated this the 18th day of March, 2015

ORDER

Accused in C.C.No.80/2010 on the file of the Judicial First Class Magistrate Court-III, Palakkad, is the revision petitioner herein. The case was taken on file on the basis of a private complaint filed by the complainant herein, against the revision petitioner, alleging offence under Section 138 of the Negotiable Instruments Act (hereinafter called 'the Act').

2. The case of the complainant in the complaint was that, revision petitioner borrowed a sum of ₹2,00,000/- and issued Ext.P1 cheque dated 29.07.2009 in discharge of that liability, which when presented was dishonoured for the reason 'funds insufficient', evidenced by Ext.P2 dishonour memo. Complainant issued Ext.P3 notice vide Ext.P3(a) postal receipt and the same was received by the

revision petitioner evidenced by Ext.P4 postal acknowledgment. He had not paid the amount. So he had committed the offence punishable under Section 138 of the Negotiable Instruments Act. Hence the complaint.

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 P4 and P3(a) 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, he had borrowed a sum of ₹15,000/- and as a security for the same, he had given four blank signed cheques, one of which was mis-used and the present complaint was filed. No defence evidence was adduced on his side to prove his case.

4. 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 the cheque amount of ₹2,00,000/-, as compensation to the complainant, in default to undergo simple imprisonment for three months more under Section 357(3) of the Code of Criminal Procedure. Aggrieved by the same, he filed Criminal Appeal No.279/2013 before the Sessions Court, Palakkad and it was made over to the Second Additional Sessions Court, Palakkad, for disposal and the learned Additional Sessions Judge allowed the appeal in part, confirming the order of conviction, but modified the sentence to imprisonment till rising of court and also to pay a fine of ₹2,01,000/-, in default to undergo, simple imprisonment for three months and directed to pay an amount of ₹2,00,000/- as compensation to the complainant, out of the fine amount under Section 357(1)(b) of the Code

of Criminal Procedure and time was granted till 11.02.2014 to pay the amount. Dissatisfied with the same, the present revision has been filed by the revision petitioner/accused before the court below.

5. Considering the scope of enquiry and nature of defence taken, 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 learned Public Prosecutor dispensing with notice to the second respondent.

6. The counsel for the revision petitioner submitted that, even on earlier occasions, there were financial transactions between them and the cheques given as security were not returned and one of the cheque given was mis-used and the present complaint was filed. These aspects were not properly appreciated by the court below. He had further submitted that, if this court is not inclined to interfere with the order of conviction and sentence, he prayed for six months time to pay the amount. Public

Prosecutor supported the concurrent findings of the court below.

7. The case of the complainant in the complaint was that, revision petitioner borrowed a sum of ₹2,00,000/- and issued Ext.P1 cheque in discharge of that liability, which when presented was dishonoured and in spite of notice issued, the revision petitioner had not paid the amount.

8. The case of the revision petitioner was that, he had borrowed only an amount of ₹15,000/- and blank signed cheques given as security was mis-used. Except a bare suggestion given, there is no other evidence adduced on the side of the revision petitioner to prove this fact. Further he did not send any reply to the notice issued as well. The revision petitioner had a case that, he was having regular financial transactions with the complainant and he used to borrow amount for his business purpose. That shows that, the complainant is having the financial capacity to pay the amount as well. So under the circumstances and

in the absence of any evidence adduced on the side of the revision petitioner to rebut the presumption, courts below were perfectly justified in convicting the revision petitioner for the offence under Section 138 of the Negotiable Instruments Act and the concurrent findings of the court below on this aspect do not call for any interference.

9. As regards the sentence is concerned, the court below had sentenced the revision petitioner to undergo simple imprisonment for six months and also to pay a compensation of ₹2,00,000/-, to the complainant, in default to undergo simple imprisonment for three months under Section 357(3) of the Code of Criminal Procedure. But the appellate court had relied on the decision reported in **Somanath Sarkar v. Utpal Basu Mallick [2013(4) KLT 350 (S.C.)]**, reduced the substantive sentence of imprisonment till rising of the court and fixed the fine as ₹2,01,000/-, with default sentence of three months and directed to pay ₹2,00,000/- out of the fine amount as compensation to the complainant under Section 357(1)(b) of

the Code of Criminal Procedure. So maximum leniency as shown by the appellate court in fixing the fine amount and also imposing substantive sentence. It cannot be said to be excessive or harsh requiring interference at the hands of this court. However, considering the amount involved, this court feels that, the request of the revision petitioner can be considered and time can be granted till 17.08.2015 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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P.A. to Judge

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