

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. 362 of 2015 ()

**AGAINST THE JUDGMENT IN Crl.APPEAL No. 32/2014 of ADDL.SESIONS COURT ,
KOTTAYAM, DATED 01-12-2014**

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**AGAINST THE JUDGMENT IN ST 1174/2013 of J.M.F.C.- II(MOBILE), KOTTAYAM,
DATED 04.01.2014**

REVISION PETITIONER(S):

**YAMUNA,
W/o. SHIBIMON C.B.,
ANJALI BHAVAN, CHENNAMKARY,
ALAPPUZHA.**

**BY ADVS.SRI. E.C.POULOSE
SMT. BOBBY RAPHAEL .C**

RESPONDENT(S):

- 1. M/S.SREE GOKULAM CHITS AND FINANCE CO. (P) LTD.,
CENTRAL OFFICE AT NO.66, ARCOT ROAD, CHENNAI - 24,
DIVISIONAL OFFICE, PRAKKAT BUILDINGS, IST FLOOR,
CENTRAL JUNCTION, KOTTAYAM - I,
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER,
R. BINOD KUMAR.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

R2 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:**

K. RAMAKRISHNAN, J.

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Crl. R. P. No.362 of 2015

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Dated this the 18th day of March, 2015

ORDER

Accused in S.T.No.1174/2013 on the file of the Judicial First Class Magistrate Court-II (Mobile), Kottayam, is the revision petitioner herein. The case was taken on file on the basis of a private complaint filed by the first respondent company 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 stood as a surety to the subscriber of the chitty, who committed default in payment of the amount and in discharge of that liability, she had issued Ext.P7 cheque for an amount of ₹72,472/- being the amount due, which when presented was dishonoured for the reason 'funds insufficient', evidenced by Ext.P8 dishonour

memo. Complainant issued Ext.P11 notice, vide Ext.P10 postal receipt demanding payment and intimating the dishonour, but the same was returned with endorsement 'unclaimed'. She had not paid the amount. So she 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 her and she pleaded not guilty. In order to prove the case of the complainant, the power of attorney holder evidenced by Ext.P1 power of attorney was examined as PW1 and Exts.P1 to P11 were marked on their side. After closure of the complainant's evidence, the revision petitioner was questioned under Section 313 of the Code of Criminal Procedure and she denied all the incriminating circumstances brought against her in the complainant's evidence. She had further stated that, at the time of bidding the chitty, her blank signed cheque was obtained as a security and mis-using the same, the present complaint has

been filed. No defence evidence was adduced on her side to prove her 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 her thereunder and sentenced her to undergo imprisonment till rising of the court and directed her to pay a compensation of ₹67,472/-, after deducting ₹5,000/- paid during the pendency of the proceedings to the complainant, in default to undergo simple imprisonment for three months under Section 357(3) of the Code of Criminal Procedure. Aggrieved by the same, she filed Criminal Appeal No.32/2014 before the Sessions Court, Kottayam and it was made over to First Additional Sessions Court, Kottayam, for disposal and the learned Additional Sessions Judge dismissed the appeal, confirming the order of conviction and sentence passed by the court below. 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 the 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 first respondent.

6. The counsel for the revision petitioner submitted that, the courts below have not properly appreciated the evidence and the contentions raised. He had also submitted that, if for any reasons, this court is not inclined to interfere with the conviction and sentence, prayed for granting six months time for payment of the amount. Learned Public Prosecutor also supported the concurrent findings of the court below.

7. The case of the complainant in the complaint was that, revision petitioner stood as a surety for the payment of the amount due from the subscriber who bid the chitty and the subscriber committed default and the revision petitioner had undertaken to discharge that

liability, when she was informed about the default and she had issued Ext.P7 cheque for an amount of ₹72,472/-, which was found due as on 04.11.2008.

8. The case of the revision petitioner was that, the blank signed cheque given as security was mis-used and she had no transaction with the complainant. The power of attorney holder of the complainant was examined as PW1 and he proved Ext.P1 to P11. Ext.P2 to P6 will go to show that, the amount mentioned in the cheque was due as on the date of issuance of the cheque and the revision petitioner had undertaken the liability of the principal borrower, namely subscriber and issued the cheque in discharge of the liability. She did not adduce any evidence to prove her defence. There is no evidence to show that, the principal borrower had discharged the liability as such. Merely because she had paid ₹5,000/-, after the offence was completed is not a ground to exonerate her from the liability. So the 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, court below had considered the payment of ₹5,000/- and fixed the compensation to be payable as ₹67,472/- and the substantive sentence was given only till rising of the court and default sentence of three months imposed. This was confirmed by the appellate court. Maximum leniency has been shown by the courts below in imposing the sentence as well. I do not find any reason to interfere with the sentence imposed, as it cannot be said to be excessive.

Considering the fact that, the petitioner is a lady and she had undertaken the liability of the principal borrower, this court feels that, time sought for by the counsel for the revision petitioner appears to be reasonable. So the revision petitioner is granted six months time to pay the amount. She is directed to pay the amount on or before 18.09.2015, till then, the execution of sentence is directed

to be kept in abeyance.

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