

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

Crl.Rev.Pet.No. 372 of 2015 ()

Crl.APPEAL NO. 361/2013 of ADDL. SESSIONS JUDGE (SPL. COURT), KOTTAYAM

ST 17/2013 of J.M.F.C. COURT - II, ETTUMANUR

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**RATHEESH BABU AGED 27 YEARS
RATHEESH BHAVAN, VAZHACHAL P.O., NANGUMANNADY
THIRUVANANTHAPURAM.**

BY ADV. SRI.M.R.SARIN PANICKER

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

- 1. STATE OF KERALA
REPRESENTED BY ITS PUBLIC PROSECUTOR
KOTTAYAM.**
- 2. VINOD KUMAR, AGED 40,
S/O. AYYAPPAN PILLAI, VISMAYA HOUSE, ETTUMANOOR, NEENDOOR
KOTTAYAM - 686 001.**

R BY PUBLIC PROSECUTOR SEENA RAMAKRISHNAN

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
19-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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C.T.RAVIKUMAR, J.

Cr. R.P. No.372 of 2015

Dated this the 19th day of March, 2015

ORDER

This revision petition is directed against the judgment dated 3.02.2015 of the Court of Additional Sessions Judge - II (Special) Kottayam in Crl. Appeal No.361/2013. The revision petitioner who was the accused in ST No.17/2013 on the files of Judicial First Class Magistrate Court - II, Ettumanoor was tried for the offence under Section 138 of the Negotiable Instruments Act. He was convicted thereunder and sentenced to undergo simple imprisonment for three months and was ordered to pay a compensation of Rs.45,000/- to the complainant under Section 357 (3) Cr.P.C. In default of payment of compensation he was ordered to undergo simple imprisonment for a further period of one month. Aggrieved by the said judgment the revision petitioner preferred Crl. Appeal No.361/2013 and the appellate court upon hearing the rival contentions and evaluating the evidence on record confirmed the conviction, but

modified the sentence. The substantive sentence imposed against the petitioner for the conviction under Section 138 of the NI Act was modified as imprisonment till the rising of the Court. The direction to pay compensation of Rs.45,000/- to the complainant under Section 357 (3) of Cr.P.C and in default of payment of compensation to undergo simple imprisonment for one month were maintained.

2. I have heard the learned counsel appearing for the revision petitioner and also the learned Public Prosecutor. Evidently, conviction under Section 138 of the NI Act was concurrently entered against the revision petitioner. The case of the second respondent/complainant was that Exhibit P 1 cheque was issued in his favour by the revision petitioner for discharging a legally enforceable debt and the same, on its presentation, was dishonoured on the ground of insufficiency of funds in the account maintained by the revision petitioner. There is no case for the revision petitioner that the complainant had failed to follow the

statutory proceedings prescribed under the NI Act before filing the complaint and there is also no grievance regarding the procedures adopted by the courts below. To bring home the charge against the revision petitioner the complainant got himself examined as PW1 and got marked as Exhibit P 1 to P 6. On closure of the evidence of the complainant, the revision petitioner was examined under Section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances put to him. On the side of the revision petitioner, he got himself examined as DW2 and Messrs. Dani K.Sabu and Asokan were examined as DW1 and DW3 Exhibits D1 to D3 were also marked. The evidence of the complainant as PW1 with Exhibits P 1 to P 6 would prove the execution of Exhibit P 1 cheque, it was found. After evaluating the evidence adduced by both sides the trial court arrived at the conclusion that the complainant was entitled to get the presumption available under Section 139 of the NI Act and that the revision petitioner had failed to dislodge the presumption thus available to the complainant. In

other words, the evidence of DW 1 to DW3 were held as insufficient to dislodge the said presumption. After a detailed discussion of the evidence the trial court found that the second respondent had succeeded in establishing commission of the offence under Section 138 of the N.I. Act by the revision petitioner and consequently convicted him thereunder. The appellate court virtually scanned the entire evidence and on re-appreciation of the evidence found no reason to disagree with the conclusions and findings arrived at by the trial court. Accordingly, the appellate court confirmed the conviction of the revision petitioner for the offence thereunder. Despite the persuasive arguments of the learned counsel for the revision petitioner, I do not find any reason whatsoever to interfere with the conviction concurrently entered against the accused. It was not shown that the appreciation of the evidence by the courts below are utterly perverse or that they are totally against the weight of evidence. The revision petitioner has also failed to bring out any infirmity or error in law capable of

compelling this court to invoke the revisional jurisdiction. In such circumstances I do not find any reason to interfere with the conviction concurrently entered against the revision petitioner under Section 138 of the NI Act and accordingly, this conviction thereunder is confirmed.

3. What survives for consideration is whether the sentence imposed for the conviction under Section 138 of the NI Act on the revision petitioner calls for any interference. As noticed herein before for the conviction under Section 138 of the NI Act, the trial court imposed the sentence as aforesaid on the revision petitioner and the appellate court interfered with the substantive sentence to undergo simple imprisonment for a period of three months and modified it as imprisonment till the rising of the court. The direction to pay compensation under Section 357 (3) Cr.P.C. and also the default clause were maintained by the appellate court. In this context it is to be noted that the Hon'ble Apex Court in the decision in **Damodar S. Prabhu v. Sayed Babalal** reported in **AIR 2010 SC 1907**, virtually held that in a

case of dishonour of cheque the pecuniary aspect has to be given priority over the punitive aspect. In such circumstances, I do not find any infirmity in the action on the part of the appellate court in interfering with the substantive sentence imposed on the revision petitioner for the offence under Section 138 of the NI Act and modifying it as imprisonment till the rising of the court. Exhibit P 1 cheque is dated 5.06.2012 and the cheque amount is Rs.45,000/-. The amount of compensation ordered to be paid under Section 357 (3), Cr.P.C. is equal to the cheque amount viz. Rs.45,000/-. In the circumstances, I am of the view that the appellate court is justified maintaining the direction to pay the amount of Rs.45,000/- as compensation under Section 357 (3), Cr.P.C. and also in maintaining the default clause. When this Court was about to dismiss this revision petition without any qualification, the learned counsel appearing for the petitioner submitted that reasonable time may be granted to the revision petitioner to pay the amount of compensation. In the said circumstances while

confirming the conviction and sentence, the learned Magistrate is directed to keep in abeyance the execution of sentence also the steps for recovering the amount of compensation for a period of three months to enable the revision petitioner to deposit the said amount before the trial court and also to undergo imprisonment till the rising of the court, within the above stipulated time. Failure on the part of the revision petitioner to do so within the above stipulated time the trial court shall take appropriate steps in accordance with law, forthwith. Subject to the same, this revision petition is dismissed.

C.T.RAVIKUMAR, JUDGE

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