

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

Crl.Rev.Pet.No. 379 of 2015 ()

AGAINST THE JUDGMENT IN CRA 173/2008 of ADDL.SESIONS COURT (FAST
TRACK-II), ALAPPUZHA DATED 07-02-2009

AGAINST THE JUDGMENT IN CC 1278/2004 of J.M.F.C.-I, CHERTHALA
DATED 29-02-2008

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

PREMAN
S/O.APPUKKUTTAN, KUTTISSERRY HOUSE, UPPUNGAL
PUNNAYURKULAM P.O., THRISSUR DISTRICT.

BY ADV. SRI.B.PRAMOD

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. N.K.NAZAR @ NIZAR
S/O.N.E.KOYA, BAITH UL-NOOR, PATTANAKKADU P.O., CHERTHALA
ALAPPUZHA DISTRICT-688524

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.P.SHANES METHAR
R2 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
20-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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CRL.R.P. No.379 OF 2015

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Dated this the 20th 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 revisionist was the accused in C.C.No.1278 of 2004 on the files of the Court of Judicial First Class Magistrate-I, Cherthala. He was found guilty for the said offence and on being convicted, he was sentenced to undergo simple imprisonment for a period of ten months and to pay a fine of ₹ 3,30,000/-. In default of payment of fine, he was also directed to undergo simple imprisonment for a further period of two months. On deposit of the fine amount, it was directed to be given to the complainant as compensation under section 357 (1) of the Code of Criminal Procedure. Aggrieved by the said judgment, the petitioner preferred Crl.Appeal No.173 of 2008. The appellate court confirmed

the conviction and modified the sentence. In fact, the substantive sentence was maintained and the amount of fine of ₹3,30,000/- was reduced to ₹2,60,000/-. The default clause was also maintained. This revision petition is filed in the said circumstances.

2. I have heard the learned counsel for the petitioner, the learned counsel for the first respondent and also the learned Public Prosecutor.

3. Obviously, the conviction was concurrently entered against the revision petitioner by the courts below under section 138, NI Act. In such circumstances, an interference is called for only if the petitioner succeeds in bringing out a case of utter perverse appreciation of evidence or any manifest error in law or any glaring infirmities. Having heard the learned counsel on both sides and perusing judgments of the courts below, I am of the considered view that the petitioner has failed to bring out any such circumstances so as to compel this Court to invoke the revisional jurisdiction. On the

other hand, a perusal of the judgments would reveal that the courts below have concurrently arrived at the truth not in a perfunctory manner whilst the findings are based on analytical discussion of evidence in the light of the relevant provision of law. In the circumstances, I have no hesitation to hold that no interference is called for with respect to the conviction entered against the revision petitioner. Accordingly, conviction entered against the revision petitioner under section 138, NI Act is confirmed.

4. Now the question to be decided is whether the sentence imposed on the revision petitioner for the conviction under section 138 NI Act calls for interference. In the matter of such consideration, the decisions of the Hon'ble Apex Court in **Damodar S.Prabhu v. Sayed Babalal H.** [AIR 2010 SC 1907] and **Kaushalya Devi Massand v. Roopkishore** [AIR 2011 SC 2566] assume relevance. The Hon'ble Apex Court held therein that the offence under section 138, NI Act is basically of civil nature, but criminal colour has been given for the said offence by incorporating the same in the NI Act. It

was further held that the very intention of the legislature in enacting the said provision is to make the drawer of the cheque to pay the amount by giving an opportunity and not to send him to jail. In the light of those decisions, in the matter of dishonour of a cheque, the pecuniary aspect has to be given priority over the punitive aspect and not vice versa. In this case, it is submitted by the learned counsel for the revision petitioner that the revision petitioner was arrested on 2.03.2015 and presently, he is undergoing the sentence. The learned counsel for the first respondent also would submit that immediately thereafter, the amount of fine directed to be given to the first respondent as compensation was received by the first respondent. For the conviction under section 138 NI Act, the trial court sentenced the petitioner to undergo simple imprisonment for a period of ten months and the said substantive sentence was maintained by the appellate court.

5. Taking into account those facts and the observations and the dictum of the decisions referred supra, I am inclined to modify the

substantive sentence. Accordingly, substantive sentence to undergo simple imprisonment for a period of ten months is set aside. The jail sentence is reduced to the period of imprisonment already undergone by the revision petitioner. Though the amount of fine could not have been paid directly to the first respondent/complainant without specific orders in that regard from the court, taking into account the attending circumstances as expatiated earlier and in the interest of justice, the following further orders are also issued:-

The petitioner shall produce a memo signed by the first respondent/complainant, as well, showing the receipt of the amount of ₹2,60,000/-, the amount of fine directed to be paid as compensation under section 357(1) Cr.P.C to the first respondent/complainant, before the trial court, within a period of one week from the date of receipt of copy of this order. On its receipt, the trial court shall make appropriate entries in its Fine Register. Taking into account all the attending circumstances including the manner in which the payment was effected and the decision in **Damodar's** case (supra), the petitioner is further directed to pay an amount of ₹10,000/- to the

Kerala Legal Services Authority within a period of three weeks from the date of his release from jail.

This revision petition is allowed in part and disposed of, as above.

Sd/-

**C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010