

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. 383 of 2015 ()

AGAINST THE JUDGMENT IN CRA 601/2012 of SESSIONS COURT,TRIVANDRUM DATED 30-01-2014

AGAINST THE JUDGMENT IN CC 28/2012 of JUDICIAL FIRST CLASS MAGISTRATE COURT-III, NEDUMANGAD DATED 30-11-2012

REVISION PETITIONER/APPELLANT/ACCUSED:

**JAYAN,
S/O.CHELLAPPAN, ASWATHY BHAVAN, KADUVACHIRA LANE
VENGODE, KUDAVOOR(P.O), THONNAKKAL
MANGALAPURAM, THIRUVANANTHAPURAM DISTRICT.**

**BY ADVS.SRI.GOPAKUMAR R.THALIYAL
SRI.R.B.RAJESH**

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

**1. P.KAMAL,
S/O.PEERU MUHAMMED, T.C.VI/678, PAZHAVILA VEEDU
ARAPPURA JUNCTION, VATTIYOORKAVU(P.O)
THIRUVANANTHAPURAM, PIN-695022.**

**2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682031.**

R2 BY N.SURESH, PUBLIC PROSECUTOR

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23-03-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

JV

C.T. RAVIKUMAR, J.

Crl.R.P. No. 383 of 2015

Dated this the 23rd day of March, 2015

ORDER

This revision petition is filed against the conviction concurrently entered against the petitioner under Section 138 of the Negotiable Instruments Act. A composite sentence of simple imprisonment and fine was imposed on the petitioner in CC No.28/2012 by the Court of the Judicial First Class Magistrate-III, Nedumangad. Evidently, for the conviction under section 138 of the N.I.Act the trial court sentenced the petitioner to undergo simple imprisonment for a period of six months and to pay fine of ₹1,00,000/-. The amount of fine on realisation was ordered to be paid to the complainant under section 357 of the Code of Criminal Procedure. In default of payment of fine the accused was ordered to undergo simple imprisonment for a further period of three months. The petitioner filed Crl. A. No.601/2012 against the said judgment. The appellate court upon confirming the conviction under section 138 of the N.I.Act found that the sentence imposed therefor by the trial court is excessive and accordingly the sentence to undergo simple imprisonment for a period of six months was modified and it was

reduced to imprisonment till rising of the Court and the sentences to pay the fine and the default clause were maintained. This revision petition is filed against the said judgment in CrI.A. No.601/2012.

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

3. As noticed herein before, the courts below entered conviction against the revision petitioner concurrently. The revision petitioner has to bring out a case of utter, perverse appreciation of evidence or to establish that the findings of the courts below are totally against the weight of evidence on record. But, the revision petitioner has failed to bring out any such ground. No error in law was also brought out. In short, the revision petitioner has failed to establish any ground to compel this court to exercise the revisional jurisdiction to interfere with the conviction concurrently entered against him for the offence under Section 138 of the N.I.Act and accordingly, it is confirmed.

4. Now, the question is whether the sentence imposed on the revision petitioner invites interference. In the contextual situation it is relevant to refer to the decision of the Hon'ble Apex Court in **Damodar S. Prabhu v. Sayed**

Babalal.H reported in AIR 2010 SC 1907 and **Kaushalya Devi Massand v. Roopkishore** reported AIR 2011 SC 2566. Going by the said decision of the Hon'ble Apex Court the offences under section 138 of the act are basically of civil nature but criminal colour has been given by incorporating the same in the Negotiable Instruments Act and that the intention of the legislature in enacting the provision under section 138 of the N.I. Act is to make the drawer of the cheque to pay the amount of fine, by giving an opportunity and not to sent him to jail. In the light of the decisions referred supra I am of the view that the jail sentence imposed for the conviction to under section 138 of the N.I.Act on the revision petitioner was rightly interfered with by the appellate court. Ext.P1 cheque is dated 09.05.2009 and the cheque amount is Rs.1,00,000/-. In the said circumstances, the sentence imposed for the conviction for the offence under section 138 of the N.I.Act by the appellate court calls for no interference and accordingly, it is also confirmed.

5. However, the petitioner is granted four months time to pay the amount of fine imposed and to appear before the court to suffer the sentence of imprisonment till the rising of the court. Needless to say that, in case failure of the part of the petitioner

to pay the amount of fine and to appear before the trial court to suffer imprisonment, the trial court shall take appropriate steps for executing the sentence in accordance with law, expeditiously.

Subject to the above this revision petition is dismissed.

Sd/-
C.T. RAVIKUMAR,
JUDGE

JV