

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

Crl.Rev.Pet.No. 416 of 2015 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 148/2013 of ADDITIONAL
SESSIONS JUDGE-I,KOTTAYAM DATED 24.10.2014

AGAINST THE JUDGMENT IN ST NO. 50/2012 of JUDICIAL FIRST CLASS
MAGISTRATE COURT-III, KANJIRAPPALLY DATED 26.4.2013

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

P.K.JOHN AGED 52 YEARS
S/O.JOHN, PALLIKUNNEL HOUSE, CHAMAMPATHAL BHAGOM
VAZHOOR VILLAGE, CHANGANACHERRY.

BY ADV. SRI.JINU JOSEPH

RESPONDENT/COMPLAINANT & STATE:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA.
2. P.B.KRISHNANKUTTY NAIR, AGED 64 YEARS
S/O.BHASKARAN NAIR, ANANTHABHAVANAM HOUSE
THEERTHAPADAPURAM BHAGOM, VAZHOOR KARA
VAZHOOR VILLAGE, CHANGANACHERRY-696101

BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 31-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

dlk

C.T.RAVIKUMAR, J

Crl.R.P. No. 416 of 2015

Dated this the 31st day of March, 2015

ORDER

This revision petition is filed against the conviction concurrently entered against the revision petitioner under section 138 of the Negotiable Instruments Act. The revision petitioner was the accused in S.T.No.50/2012 on the files of the court of the Judicial First Class Magistrate-III, Kanjirappally. He was found guilty and convicted under section 138 of the N.I.Act and sentenced to undergo simple imprisonment for a period of three months. He was also directed to pay a compensation of ₹ 50,000/- to the complainant under section 357(3) of the Code of Criminal Procedure and default of payment of compensation to undergo simple imprisonment for one month. The petitioner filed Crl.A.No.148/2013 against the said judgment. The appeal was allowed in part. The conviction was confirmed and the sentence was modified by the appellate court as per the impugned judgment. The substantive sentence was set aside and for the conviction under section 138 of the N.I.Act the revision petitioner was sentenced by the appellate court to pay fine of ₹78,000/- and in default of

payment of fine he was directed to undergo simple imprisonment for one month. The amount of fine, if realised was directed to be given to the complainant as compensation under section 357(1) Cr.P.C. This revision petition is filed in the said circumstances.

2. I have heard the learned counsel for the revision petitioner.

3. As noticed hereinbefore, conviction was entered against the revision petitioner, concurrently. In such circumstances, to compel this Court to invoke the revisional jurisdiction to interfere with the said impugned judgment the petitioner has either to show that the courts below have appreciated the evidence on record in an utterly perverse manner or conclusions arrived at are totally against the weight of the evidence. Such an interference is also permissible in a case where an error in law is brought out. However, no such case has been brought out by the petitioner warranting interference in exercise of the revisional jurisdiction. In such circumstances, I find no reason to interfere with the conviction concurrently entered against the revision petitioner under section 138 of the N.I.Act. In the said circumstances, the conviction of the revision petitioner under section 138 of the N.I.Act is confirmed. I

have already adverted to the sentence imposed by the trial court on the petitioner for the offence under section 138 of the N.I.Act. Evidently, the substantive sentence imposed on the revision petitioner for the conviction under section 138 of the N.I.Act was set aside by the appellate court. The direction to pay compensation of ₹50,000/- was virtually modified by the court and for the conviction under section 138 of the N.I.Act after setting aside the jail sentence the petitioner was sentenced to pay a fine of ₹ 78,000/-. It is to be noted in the context that the petitioner was in fact, sentenced to undergo simple imprisonment for three months by the trial court and the amount covered by the cheque in question is ₹50,000/- The cheque in question was issued on 23.7.2008. It was taking into account all such circumstances that the appellate court thought it fit to sentence the petitioner to pay a fine of ₹78,000/-. In the circumstances referred above I am of the view that it cannot be said to be highly excessive for the conviction under section 138 of the N.I.Act warranting interference. In short, the sentence imposed on the petitioner for the conviction under section 138 of the N.I.Act is also calls for no interference. When this Court was about to dismiss the revision petition the learned

counsel for the revision petitioner submitted that some reasonable time may be granted to the revision petitioner to effect payment of fine. In such circumstances while confirming the conviction as also the sentence imposed on the petitioner the learned magistrate is directed to keep in abeyance the execution of the sentence for a period of five months to enable the revision petitioner to effect deposit of the amount before the trial court within the above stipulated time. Needless to say that in case of failure on the part of the revision petitioner to deposit the amount of fine in the meanwhile the trial court shall take appropriate steps for execution of the sentence, in accordance with law, forthwith.

Subject to the above this revision petition is dismissed.

Sd/-

C.T.RAVIKUMAR,JUDGE.

dlk