

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

Crl.Rev.Pet.No. 420 of 2015 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 48/2013 of ADDITIONAL SESSIONS
JUDGE-II (SPL.), KOTTAYAM DATED 25-07-2014

AGAINST THE JUDGMENT IN ST NO. 64/2012 of JUDICIAL FIRST CLASS
MAGISTRATE COURT-II, VAIKOM DATED 11-12-2012

PETITIONER/APPELLANT/ACCUSED:

SUKUMARAN
S/O.NEELAKANDAN, MALAYIL HOUSE, KOTHANALLOOR KARA
KOTHANALLOOR VILLAGE, VAIKOM TALUK, KOTTAYAM

BY ADVS.SRI.B.PREMOD
SRI.SUDHEER GANESH KUMAR.R.

RESPONDENTS/COMPLAINANT&STATE:

1. GENTLEMAN CHIT FUNDS COMPANY (INDIA) PVT. LTD.
(H.O)ANAND BASAR, 1ST FLOOR, THALAYOLAPARAMBU P O
VADAYAR VILLAGE, REP BY ITS BUSINESS MANAGER
N APPUKUTTAN NAIR, S/O.NEELAKANDAPILLA
MELAZHATHU HOUSE, UDAYANAPURAM P O
VADAKKEMURI VILLAGE, VAIKOM TALUK, KOTTAYAM-686143

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

R1 BY ADVS. SRI.A.T.ANILKUMAR
SMT.V.SHYLAJA
BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 09-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

dlk

C.T.RAVIKUMAR, J

Crl.R.P.No.420 of 2015

Dated this the 9th day of April, 2015

ORDER

This revision petition is filed against the judgment of the court of the Additional Sessions Judge-II, (Special) Kottayam in Crl.Appeal No. 48/2013. As per the same the judgment of the court of the Judicial First Class Magistrate-II, Vaikom in S.T.No.64/2012 convicting the petitioner under section 138 of the Negotiable Instruments Act was confirmed and while modifying the sentence imposed therefor.

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

3. Evidently, conviction was concurrently entered against the revision petitioner for the offence under section 138 of the N.I.Act. The first respondent herein/the complainant filed a complaint which ultimately culminated in registration of S.T.No.64/2012 alleging commission of offence under section 138 of the N.I.Act against the revision petitioner. The case of the first respondent was that the son of the revision petitioner was a subscriber to three chitties conducted by the complainant company and that he bid the said chitties and received the prize amount after

executing a chit agreement. The revision petitioner herein was the guarantor and he has also executed a chit agreement in favour of the company. The subscriber committed default in effecting repayment of the chitty instalments and then, on 31.05.2010 the complainant issued notice to the revision petitioner as also to the subscriber to the chitty viz., the son of the revision petitioner. On receipt of notice the accused approached the complainant company and on verification of the account settled the dispute for ₹ 1,93,560/- and in discharge of the said legally enforceable debt he issued Ext.P6 cheque dated 16.4.2011. The said cheque on its presentation for encashment was bounced on account of paucity of fund in the account maintained by the revision petitioner. It was the further case of the revision petitioner that statutory notice was issued to the revision petitioner intimating him about the dishonour of the cheque and calling upon him to pay the amount due. Evidently, it is the failure on the part of the revision petitioner to pay the amount within the statutorily permissible time that constrained the first respondent to file the complaint which was ultimately taken on file and registered as S.T.No.64/2012. To bring home the charge against the revision petitioner the complainant company got examined its Business Manager and the Managing

Director respectively as PWs 1 and 2 and got marked Exts.P1 to P11. On closing the complainant's evidence the revision petitioner was examined under section 313, Cr.P.C and he denied all the incriminating circumstances put to him. The son of the revision petitioner was examined as DW1 on his side though no documentary evidence was adduced. It is after careful evaluation of the evidence that the trial court found the revision petitioner guilty under section 138 of the N.I.Act and consequently convicted him thereunder and sentenced him to undergo simple imprisonment for six months besides directing him to pay a compensation of ₹ 1,73,560/- as compensation to the complainant under section 357 (3) Cr.P.C and in default of payment to undergo simple imprisonment for a further period of six months. In Crl.A.No.48/2013 the appellate court confirmed the conviction. The substantive sentence was reduced to imprisonment till the rising of the court while maintaining the direction to pay compensation as also the default clause. This revision petition is filed in the said circumstances.

4. The learned counsel for the revision petitioner contended that in the instant case the revision petitioner had denied the execution of the cheque and in such circumstances the

complainant ought to have established the execution of the cheque to avail the benefit available under section 139 of the N.I.Act and to establish the charge against the revision petitioner. In this context it is to be noted that the revision petitioner has not mounted the box and given any evidence. True that, his son who is the subscriber of the chitties mounted the box and gave the evidence as DW1 on the side of the revision petitioner. Thus, it is evident that the revision petitioner has not adduced any substantive evidence denying the execution of Ext.P6 cheque. Even if it is taken that DW1 denied handing over of any cheque it is a fact that Ext.P6 cheque carrying signature of the revision petitioner reached the hands of the first respondent. Even if it is taken that there was a denial of execution of the cheque the evidence on record would reveal that the first respondent has proved the actual transaction. In **Gopan v Tonny Varghese** reported in 2008(1) KLT 257 this Court has considered the issue as to how an execution of cheque could be established when there is a denial of execution of the cheque. It is held therein that in such circumstances it will be open to the complainant to prove the same by establishing actual transaction. In this case Exts.P1 to P3 would reveal the fact that son of the revision petitioner viz., DW1, was a subscriber in respect of 3

chitties and he bid the amount and for that the petitioner stood as a guarantor. Ext.P2(a) to Ext.P2(c) are agreements pertaining to those chitties and these facts are not at disputed by the revision petitioner. Even, in this revision petition the revision petitioner did not dispute the fact that his son was a subscriber to three chitties covered by Exts.P2(a) to P2(c) agreements and he stood as surety to those chitty transactions to enable his son to receive the amount. It is to be noted in this context that DW1, had admitted the chitty transaction with the company and also that he had committed default in making repayment. He admitted his signatures in Exts.P2 (a) (P2(b) and P2(c) agreements. The discussion of the said evidence and also regarding the further evidence tendered by DW1 dealt with in paragraph 9 of the trial court judgment and consideration of such evidence by the appellate court were not challenged by the revision petitioner as factually wrong in the face of evidence on record. The courts below, taking into account all such aspects found no reason to disbelieve the oral testimonies of PW1 and PW2 supported by documentary evidence. In such circumstances, I do not find any illegality in the finding of the courts below that the complainant had succeeded in establishing the fact that Ext.P6 cheque was issued to discharge a legally enforceable

debt and that it got dishonoured on being presented for encashment. There is no dispute regarding the adherence with the mandatory procedures under the Negotiable Instruments Act by the complainant, so also there is no grievance to the revision petitioner regarding the procedures followed by the courts below. In such circumstances, when the courts below concurrently entered conviction against the revision petitioner, to compel this Court to invoke the revisional jurisdiction to interfere with such a conviction the revision petitioner has to make out a case of utter perverse appreciation of evidence or that the conclusions arrived at by the courts below are totally against the weight of evidence. Such interference is also permissible in case the error in law is brought out. No such grounds were established by the revision petitioner so as to compel this Court to invoke the revisional jurisdiction to interfere with the conviction concurrently entered against the petitioner for the offence under section 1389 of the N.I.Act. In the result, conviction entered against the revision petitioner for the offence under section 138 of the N.I.Act is confirmed.

5. As noticed hereinbefore, the appellate court modified the sentence passed by the trial court for the conviction under section 138 of the N.I.Act. Evidently, the substantive sentence imposed on

the petitioner by the trial court was modified and reduced to imprisonment till the rising of the court by the appellate court. The appellate court, evidently, considered the issue how the amount of compensation was arrived at by the trial court and maintained the same. Considering the fact that Ext.P6 cheque is dated 16.4.2011 and the amount involved thereunder is the same and equal to the cheque amount I do not find any reason to interfere with the direction the petitioner to pay compensation of ₹1,93,560/- and also with the default clause incorporated by the courts below. In short, I am of the view that the modified sentence imposed by the appellate court for the conviction on the revision petitioner under section 138 of the N.I.Act call for no interference and as such it is also confirmed. When this Court was about to dismiss this revision petitioner holding such a view the learned counsel for the revision petitioner submitted that some reasonable time may be granted to the revision petitioner to pay the amount of compensation. Having considered the said submission the learned Magistrate is directed to keep in abeyance the execution of the sentence as also the initiation of steps for recovering the amount of compensation for a period of eight months so as to enable the petitioner to pay the amount of compensation and to appear before the court to undergo

imprisonment till the rising of the court, within the above stipulated time. Needless to say that in case of failure on the part of the petitioner to pay the amount of compensation and to appear before the trial court within the above stipulated time limit the learned Magistrate shall take appropriate steps, in accordance with law, forthwith.

Subject to the above, this revision petition is dismissed.

Sd/-

C.T.RAVIKUMAR, JUDGE

dlk