

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

Crl.Rev.Pet.No. 442 of 2015 ()

AGAINST THE JUDGMENT IN CRA 432/2011 of II ADDL.SESIONS JUDGE,
THIRUVANANTHAPURAM DATED 30-07-2013

AGAINST THE JUDGMENT IN ST 1484/2007 of J.M.F.C.-2,THIRUVANANTHAPURAM
DATED 13-07-2011

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

BABY K.T.
INDIKKATTIL HOUSE, VAKAYAR P.O., KONNY
PATHANAMTHITTA.

BY ADV. SRI.V.PHILIP MATHEWS

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. KUMARI THOMASKUTTY
MOOLAYIL HOUSE, ST.JOSEPH CHURCH LANE, MANNANTHALA
THIRUVANANTHAPURAM- 695015.

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

R1 BY ADV. SRI.GEORGE MATHEW
R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
07-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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CRL.R.P. No.442 OF 2015

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Dated this the 7th day of April, 2015

ORDER

This revision petition is filed against the judgment in Crl.A.No.432 of 2011 passed by the Court of Additional Sessions Judge-II, Thiruvananthapuram whereby and whereunder the conviction entered against the revision petitioner by the Court of Judicial First Class Magistrate-2, Thiruvananthapuram in S.T.No.1484 of 2007 was confirmed and the sentence imposed therefor, was modified. To bring home the charge against the revision petitioner under section 138 of the Negotiable Instruments Act, the first respondent got herself examined as PW1 and got marked Exts.P1 to P7. On closure of complainant's evidence, the revision petitioner was examined under section 313 of the Code of Criminal Procedure. No defence evidence was adduced by the revision petitioner/accused. It was on a careful

evaluation of the evidence on record that the trial court arrived at the conclusion that the complainant has succeeded in proving the commission of offence under section 138 of the Negotiable Instruments Act by the revision petitioner and consequently, convicted him and sentenced to undergo simple imprisonment for six months. The petitioner was also directed to pay an amount of ₹1,00,000/- as compensation under section 357(3) Cr.P.C to the complainant. However, no default clause was incorporated. The revision petitioner took up the matter in appeal as Crl.A.No.432 of 2011. Though various contentions were raised by the revision petitioner in the said appeal, the appellate court found them meritless and consequently, confirmed the conviction of the revision petitioner under section 138, N.I Act. However, the appellate court modified the sentence. The substantive sentence was reduced to imprisonment till the rising of court. The direction to pay compensation under section 357(3) Cr.P.C was maintained. Though the trial court failed to incorporate any default sentence the appellate court directed the revision petitioner to

undergo simple imprisonment for a period of three months in case of failure on the part of the revision petitioner to pay the amount of compensation. This revision petition is filed in such circumstances.

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

3. As noticed hereinbefore, the conviction was concurrently entered against the revision petitioner by the courts below under section 138, N.I Act. After appreciating the oral testimony of the first respondent as PW1 and the documentary evidence consisting of Exts.P1 to P7, the courts below concurrently found that Ext.P2 cheque was issued by the revision petitioner for discharging a legally enforceable debt due to the first respondent and the first respondent has complied with all statutory procedures pursuant to the dishonour of the cheque and the revision petitioner has failed to pay the amount

due within the statutorily permissible period. The revision petitioner who failed to produce any evidence at the trial stage or at the appellate stage, attempted to adduce some evidence in this revision petition and virtually, with that intention he filed Annexures- 1 and 2 affidavits sworn in respectively by one Oommen C.S and one Thomas Varghese along with Crl.M.A.No.1514 of 2015 which is a petition with a prayer to stay the revenue recovery proceedings initiated to realise the amount of compensation. The petitioner did not have a case that he was not afforded with ample opportunities by the trial court to adduce evidence. He has also not assigned any reason as to why he could not tender any evidence at least at the appellate stage, in accordance with law. In such circumstances, the attempt on the part of the revision petitioner to adduce evidence by filing such affidavits along with a petition for stay cannot be appreciated at all. A scanning of the judgments of the courts below would reveal that the courts below took into consideration the evidence of the complainant as also the presumptions available to him statutorily based on the nature of

evidence adduced by him to arrive at the finding of guilt against the revision petitioner under section 138, N.I Act. The petitioner could not establish that the impugned judgment suffers from infirmity or illegality that calls for correction in exercise of revisional jurisdiction. So also the revision petitioner has failed to establish that the appreciation of evidence by the courts below is utterly perverse or totally against the weight of evidence on record. No error in law has also been brought out. In such circumstances, taking into account the fact that the conviction was concurrently entered against the revision petitioner I do not find any reason to interfere with the conviction entered against him. In short, the conviction entered against the revision petitioner under section 138, N.I Act is liable to be confirmed and accordingly, it is confirmed.

4. Evidently, for the conviction under section 138, N.I Act, the trial court sentenced the revision petitioner to undergo simple imprisonment for six months. However, the appellate court interfered

with the substantive sentence imposed by the trial court and modified it to imprisonment till the rising of court. It is to be noted that the amount of compensation awarded by the trial court which was confirmed by the appellate court is nothing but the amount covered by Ext.P1 cheque. Ext.P1 cheque is dated 10.2.2007. In such circumstances, I do not find any reason to interfere with the sentence imposed by the appellate court for the conviction under section 138, N.I Act and therefore, it is also confirmed. When this Court was about to dismiss the matter, 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. After hearing the learned counsel for the first respondent, I am inclined to direct the learned Magistrate to keep in abeyance execution of the sentence as also initiation of steps for recovering the amount of compensation for a period of five months to enable the revision petitioner to pay the amount of compensation and to appear before the trial court to suffer imprisonment till the rising of court within the above stipulated time.

Needless to say that in case of failure on the part of the revision petitioner to pay the compensation and to undergo imprisonment till the rising of court within the above time limit, appropriate steps shall be taken by the trial court in accordance with law, forthwith.

Subject to the above, this revision petition is dismissed.

**Sd/-
C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

