

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. 443 of 2015 ()

AGAINST THE JUDGMENT IN CRA 115/2009 of I ADDL.SESIONS JUDGE,
THIRUVANANTHAPURAM DATED 13-07-2012

AGAINST THE JUDGMENT IN ST 604/2007 of J.M.F.C.-V, NEYYATTINKARA
DATED 15-01-2009

PETITIONER(S)/APPELLANT/ACCUSED:

SOBHAN, AGED 51 YEARS
S/O.SREEDHARAN, KANNERU VEEDU, PUNNAVILA
MACHIYODE DESOM, CHENKAL VILLAGE, NEYYATTINKARA
THIRUVANANTHAPURAM.

BY ADVS.SRI.BIJU BALAKRISHNAN
SMT.V.S.RAAKHEE
SMT.PRINCY XAVIER

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

1. AJANTHA KUMAR
S/O.SAHADEVA PANICKER, AJANTHAYIL
DHARUVACHAPURAM DESOM, KOLLAYIL VILLAGE, NEYYATTINKARA
THIRUVANANTHAPURAM DISTRICT.

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

R1 BY ADV. SRI.SEBASTIAN JOSEPH (KURISUMMOOTTIL)
R1 BY ADV. SRI.C.MOHANAN(THIRUPURAM)
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.443 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.115 of 2009 passed by the Court of Additional Sessions Judge-I, Thiruvananthapuram whereby and whereunder the conviction entered against the revision petitioner by the Court of Judicial First Class Magistrate-V, Neyyattinkara in S.T.No.604 of 2007 under section 138 of the Negotiable Instruments Act was confirmed and the sentence imposed therefor was modified. To bring home the charge against the revision petitioner, PWs 1 and 2 were examined and Exts.P1 to P8 were got marked on the side of the complainant/first respondent herein. On the side of the revision petitioner/accused, he was examined as DW1 and one Sunil was examined as DW2. 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 him to undergo simple imprisonment for four months and to pay a fine of ₹1,05,000/-. The amount of fine, on realisation, was ordered to be paid to the complainant under section 357(1) Cr.P.C. and in default of payment of fine, the revision petitioner was ordered to undergo simple imprisonment for a further period of one month. The revision petitioner took up the matter in appeal as Crl.A.No.115 of 2009. 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 fine amount was enhanced from ₹1,05,000/- to ₹1,10,000/-. The default clause was also maintained. 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. The revision petitioner was found guilty thereunder on appreciation of evidence tendered by both sides. A scanning of the judgments of the courts below would reveal that the courts below have considered the evidence on record and arrived at the conclusion that the first respondent has succeeded in proving the commission of offence under section 138 N.I Act by the revision petitioner. The petitioner has failed to bring out a case of utter, perverse appreciation of evidence or commission of any error in law. No ground warranting an interference in exercise of revisional jurisdiction was made out by the revision petitioner. In short, I find no reason whatsoever to disagree with the findings and reasonings of the courts below. 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 the revision petitioner under 138, N.I Act in exercise of the revisional jurisdiction 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 four months. However, the appellate court interfered with the jail sentence imposed by the trial court and modified it as imprisonment till the rising of court. The amount of fine was enhanced from ₹1,05,000/- to ₹1,10,000/-. The rest of the orders of the trial court was maintained. Thus, it is evident that the jail sentence was modified and the revision petitioner is sentenced to undergo imprisonment till the rising of the court. Considering the fact that Ext.P1 is dated 6.12.2006 and the cheque amount is ₹1,00,000/- 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 accordingly, it is

confirmed. When this Court was about to dismiss the matter without any disqualification, the learned counsel for the revision petitioner submitted that some reasonable time may be granted to the revision petitioner to pay the amount of fine. 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 for a period of five months to enable the revision petitioner to pay the amount of fine and to appear before the trial court to suffer imprisonment till the rising of court, within the above stipulated time limit. Needless to say that in case of failure on the part of the revision petitioner to pay the fine amount and to undergo imprisonment till the rising of court within the time limit, appropriate steps shall be taken by the trial court in accordance with law forthwith to execute the sentence.

Subject to the above, this revision petition is dismissed.

Sd/-

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

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

