

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

Crl.Rev.Pet.No. 445 of 2015 ()

AGAINST THE JUDGMENT IN CRA 390/2012 of COURT OF ADDL. SESSIONS
JUDGE-II, TRIVANDRUM DATED 20-02-2015

AGAINST THE JUDGMENT IN S.T.NO. 975/2006 of COURT OF JUDICIAL FIRST
CLASS MAGISTRATE-VIII, TRIVANDRUM DATED 30-07-2012

REVISION PETITIONER/APPELLANT/ACCUSED:

CHANDRIKA @ KANNAMMA, AGED 50 YEARS, W/O.RADHAKRISHNAN
"THIRUVATHIRA", POOMALLIYOORKONAM
PEROORKADA P.O. THIRUVANANTHAPURAM.

BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.BENOJ C AUGUSTIN
SRI.VISHNU BHUVANENDRAN

RESPONDENTS/COMPLAINANT & STATE:

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1. P.PADMAVATHY AMMA
PADMAM, TC.5/1596, PANDIT LANE
T.R.R.A-237, PEROORKADA P.O,
THIRUVANANTHAPURAM - 695 005.
 2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 08-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.R.P.No.445 of 2015

Dated 8th April, 2015

ORDER

This revision petition is directed against the judgment of the Court of Additional Sessions Judge-II, Thiruvananthapuram in Crl.A.No.390 of 2012. The revisionist who was the accused in S.T.No.975 of 2006 was tried for the offence punishable under Section 138 of the Negotiable Instruments Act and the trial court found her guilty, convicted thereunder and sentenced her to suffer imprisonment till rising of the court. She was also ordered to pay a compensation of ₹ 2,00,000/- to the complainant under Section 357(3) Cr.P.C. and in default of payment of compensation to undergo simple imprisonment for a further period of one year. The revision petitioner preferred Crl.A.No.390 of 2012. The appellate court after re-appreciating the evidence and considering the contentions found that the conviction entered against the revision petitioner by the trial court does not warrant any appellate interference and accordingly, confirmed the conviction. The appeal was allowed in part and the sentence imposed by the trial court for the conviction under Section 138 of N.I. Act was modified. The sentence to suffer imprisonment till rising of the court

was confirmed. However, the direction to pay compensation of ₹ 2,00,000/- to the complainant under Section 357(3) Cr.P.C. was interfered with and the revision petitioner was sentenced to pay a fine of ₹ 2,00,000/-. The amount of fine, if realised, was directed to be paid as compensation to the complainant under Section 357(1) Cr.P.C. The default sentence imposed by the trial court was also modified by the appellate court. In default of payment of fine the revision petitioner was directed to undergo simple imprisonment for four months. This revision petition is filed in the said circumstances against the judgment in Crl.A.No.390 of 2012.

2. The case of the first respondent/complainant was that the revision petitioner borrowed an amount of ₹ 2,00,000 from her and in discharge of the said legally enforceable debt she issued Ext.P1 cheque. But, on presentation for encashment the said cheque was dishonoured due to insufficiency of fund in the account maintained the revision petitioner. Thereupon, the complainant issued a notice intimating the revision petitioner of the dishonour of the cheque and calling upon her to pay the amount due. But, it was returned unclaimed. It is the failure on the part of the revision petitioner to effect payment within the statutorily prescribed period that constrained the complainant to file the complaint which was taken on file and numbered as S.T.No.975 of 2006. On due

process the revision petitioner appeared before the court and the particulars of the charge were read over and explained to her and the revision petitioner pleaded not guilty. The complainant got herself examined as PW1 and got marked Exts.P1 to P5. On the closure of the evidence of the complainant the revision petitioner herein was examined under Section 313 Cr.P.C. and she denied all the incriminating circumstances put to her. However, no defence evidence was adduced.

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

3. Obviously, after considering the evidence adduced by the first respondent/complainant consisting of her own oral testimony as PW1 and documentary evidence in Exts.P1 to P5 the courts below concurrently found that the complainant had succeeded in proving commission of offence under Section 138 of N.I. Act by the revision petitioner. In this context, it is to be noted that the courts below specifically found that the revision petitioner has not disputed her signature as also the entries in Ext.P1 cheque. In such circumstances, it can only be taken that the revision petitioner has not disputed the execution of the cheque in question. If there is no dispute with respect to the execution of the cheque certainly, the complainant will get the benefit of presumption

under Section 139 of N.I. Act. True that, the presumption available under Section 139 of N.I. Act is rebuttable. The question is whether the revision petitioner has adduced any evidence to rebut the presumption available under Section 139 of N.I. Act. In this case, admittedly, the revision petitioner has not adduced any evidence either oral or documentary to dislodge the presumption available under Section 139 of N.I. Act. No circumstance capable of drawing any inference in favour of the revision petitioner was also brought to my notice. When that be the circumstances I do not find any reason to hold that the courts below went wrong in finding the revision petitioner guilty under Section 138 of N.I. Act and consequently convicting her thereunder. If so, the conviction entered against the revision petitioner under Section 138 of N.I. Act is liable to be confirmed and accordingly, it is confirmed.

4. What survives for consideration is whether in exercise of the revisional jurisdiction sentence imposed by the appellate court for the conviction under Section 138 of N.I. Act, after modifying the sentence imposed by the trial court, requires an interference. Evidently, the trial court sentenced the revision petitioner to suffer imprisonment till rising of the court. The said sentence was maintained by the appellate court. The direction to pay compensation was virtually interfered with and the revision petitioner was sentenced to pay a fine of ₹ 2,00,000/- and the

said amount of fine on realisation was directed to be paid to the complainant as compensation under Section 357(1) Cr.P.C. The default sentence was also interfered with. The trial court directed that the revision petitioner shall undergo simple imprisonment for a period of one year in case of default of payment of compensation. The appellate court directed that in default of payment of fine the revision petitioner shall undergo simple imprisonment only for a period of four months. Thus, it is evident that for the conviction under Section 138 of N.I. Act the courts below concurrently sentenced the revision petitioner to undergo imprisonment till rising of the court. The amount directed to be paid as fine is only the amount covered by Ext.P1 cheque. Ext.P1 cheque is dated 8.5.2005. The appellate court has also reduced the default sentence. In such circumstances, I do not think that there is any further scope for interfering with the sentence when once the conviction is upheld. In short, there is no reason to interfere with the sentence imposed on the revision petitioner for the conviction under Section 138 of N.I. Act in exercise of the revisional jurisdiction and accordingly, it is confirmed. When this Court was about to dismiss this case without any qualification 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. Considering the said submission the learned Magistrate is directed to keep in abeyance the execution of the sentence

for a period of eight months to enable the revision petitioner to pay the amount of fine and to appear before the court to suffer imprisonment till rising of the court, within the above stipulated period. Needless to say that in case of failure on the part of the revision petitioner to pay the amount of fine and to appear before the court to suffer imprisonment till rising of the court, within the above stipulated time, the learned Magistrate shall take appropriate steps forthwith, in accordance with law, for the execution of the sentence.

Subject to the above, this Criminal Revision Petition is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS