

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. 451 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN CRA 34/2009 of ADDL. D.C. & SESSIONS
COURT - IV, THALASSERY DATED 16-01-2015

AGAINST THE ORDER/JUDGMENT IN ST 579/2007 of ADDL.C.J.M.,THALASSERY
DATED 16-12-2008

REVISION PETITIONER/APPELLANT/ACCUSED:

M.P.SREEJITH, AGED 52 YEARS, S/O.NARAYANAN
RISHINIKETH HOUSE, KATHIRUR (PO)
THALASSERY THALUK, KANNUR (DIST).

BY ADV. SRI.P.BABU

RESPONDENTS/RESPONDENTS/COMPLAINANT:

1. RAJITHA K., AGED 40 YEARS
D/O. LATE NARAYANAN NAIR, KAILAS
THIRUVANAPURAM (PO), THUNDIYIL, PERAVOOR
THALASSERY THALUK, KANNUR (DIST).

2. STATE OF KERALA
REPRESENTED BY 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:

Crl.Rev.Pet.No. 451 of 2015

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE 1: CERTIFIED COPY OF THE JUDGMENT IN CRL.APPEAL NO.34/2009
ON THE FILE OF SESSIONS COURT, THALASSERY DATED
16.1.2015.

ANNEXURE 2: TRUE COPY OF THE JUDGMENT IN S.T.C.NO.579/09 ON THE FILE
OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT,
THALASSERY DATED 16.12.2008.

// TRUE COPY //

TKS

P.S. TO JUDGE

C.T.RAVIKUMAR, J.

Crl.R.P.No.451 of 2015

Dated 8th April, 2015

ORDER

This revision petition is directed against the judgment in Crl.A.No.34 of 2009 of the Court of Additional Sessions Judge-IV, Thalassery confirming the conviction and modifying the sentence imposed on the petitioner in S.T.No.579 of 2007 of the Court of Additional Chief Judicial Magistrate, Thalassery. The petitioner was tried for the offence punishable under Section 138 of the Negotiable Instruments Act. The allegation of the first respondent/complainant is that the revision petitioner had offered a teacher post in Chaithanya Vocational Training Centre, Thalassery and borrowed an amount of ₹ 1,00,000/- from her as security. The complainant worked there for seven months. Salary for three months was given to her and four month's salary was due to her. Later, she resigned from the post and demanded her security deposit and also the salary due to her. The revision petitioner issued two cheques one for ₹ 1,00,000/- towards the security deposit and the other for ₹ 12,000/- towards the amount due as salary. But, when she presented the cheque for ₹ 1,00,000/-for encashment the same was dishonoured due to insufficiency of fund in the account maintained by the revision petitioner. Thereupon, the

complainant issued a notice intimating the revision petitioner of the dishonour of the cheque and calling upon him to pay the amount due. 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.579 of 1997. On due process the revision petitioner appeared before the court and the particulars of the charge were read over and explained to him and the revision petitioner pleaded not guilty and claimed to be tried. The complainant got herself examined as PW1 and got marked Exts.P1 to P6 to bring home the charge against the revision petitioner. On the closure of the evidence of the complainant the revision petitioner herein was examined under Section 313 Cr.P.C. and he denied all the incriminating circumstances put to him. However, no defence evidence was adduced. On a careful evaluation of the evidence the trial court found that the complainant has succeeded in establishing the fact that the revision petitioner herein has committed the offence under Section 138 of the Negotiable Instruments Act. Consequently, he was convicted thereunder and sentenced to undergo simple imprisonment for a period of six months and also to pay an amount of ₹ 1,00,000/- as compensation 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 three months. The revision petitioner took up the matter in appeal as Crl.A.No.34 of 2009 before the Court of Additional Sessions Judge-IV, Thalassery. Various contentions were raised against the judgment of the trial court. However, the learned Additional Sessions Judge found no ground to invoke the appellate jurisdiction. It was found that the conclusions and findings of the trial court are perfectly in tune with the evidence adduced. In the said circumstances the appellate court confirmed the conviction but, at the same time, modified the sentence. The substantive sentence was reduced to simple imprisonment till the rising of the court. The direction to pay ₹ 1,00,000/- as compensation 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 three months were maintained. The captioned revision petition has been filed against the said judgment confirming the conviction and modifying the sentence as aforesaid.

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

3. As noticed hereinbefore, conviction was concurrently entered against the revision petitioner and the sentence imposed against

the revision petitioner by the trial court was modified by the appellate court as mentioned above. In such circumstances, a further interference by exercising the revisional jurisdiction is called for only if the revision petitioner succeeds in establishing that the appreciation of evidence by the trial court as also the appellate court is utterly perverse or that the conclusions reached are against the weight of the evidence. Having carefully gone through the pleadings in this revision petition and also after hearing the learned counsel for the revision petitioner I have no hesitation to hold that no such grounds were made out by the revision petitioner to compel this Court to exercise the revisional jurisdiction to interfere with the concurrent finding of conviction entered against him. No error in law was also brought to my notice. Virtually, the revision petitioner took up only the contentions which were unsuccessfully raised before the appellate court. In the said circumstances, the conviction entered against the revision petitioner under Section 138 of the Negotiable Instruments Act is liable to be confirmed and accordingly, it is confirmed.

4. Obviously, the trial court sentenced the petitioner to undergo simple imprisonment for a period of six months and also to pay an amount of ₹ 1,00,000/- as compensation 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 three months. After careful evaluation of the circumstances the appellate court interfered with the sentence and modified it. The substantive sentence to undergo simple imprisonment for six months was reduced to simple imprisonment till the rising of the court. However, the direction to pay ₹ 1,00,000/- as compensation 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 three months were maintained. Ext.P1 cheque is dated 5.6.2007 and the amount of compensation awarded is the amount covered by the said cheque. In the circumstances, I do not find any reason whatsoever to interfere with the sentence imposed by the appellate court on the revision petitioner for the conviction under Section 138, N.I. Act. Hence, it is confirmed. When this Court was about to dismiss the revision petition without any qualification the learned counsel for the revision petitioner submitted that some reasonable time may be granted to the revision petitioner to effect payment of the amount of compensation in view of the straitened circumstances. Having heard the learned counsel for the revision petitioner while dismissing this revision petition by confirming the conviction and the sentence I am inclined to direct the learned Magistrate to keep in abeyance execution of the sentence and also initiation of steps for recovering the amount of compensation for a period of five months. Ordered accordingly. Within

the stipulated period the revision petitioner shall pay the amount of compensation and appear before the trial court to undergo imprisonment till rising of the court. In case of failure on the part of the revision petitioner to pay the amount of compensation and to appear before the court to undergo imprisonment till rising of the court, within the above stipulated time, the learned Magistrate shall take appropriate steps in accordance with law, expeditiously.

Subject to the above, this revision petition is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS