

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

Crl.Rev.Pet.No. 457 of 2015 ()

AGAINST THE JUDGMENT IN CRL.A. 20/2013 of II ADDL.SESIONS COURT,
THIRUVANANTHAPURAM DATED 20-02-2015

AGAINST THE JUDGMENT IN ST 258/2008 of J.M.F.C.-2,THIRUVANANTHAPURAM
DATED 13-12-2012

REVISION PETITIONER(S):ACCUSED:

THANKAMONY
D/O.LALITHA
NEAR MARAPPALAM, NEAR VADAVOTHU KOVIL
MUTTATHARA P.O, THIRUVANANTHAPURAM

BY ADV. SRI.G.SUDHEER

RESPONDENT(S):

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1. AJITHA SREEKUMAR
CHAITHANYA, THIRUVALLOM P.O
THIRUVANANTHAPURAM-695001
 2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA ERNAKULAM-682031

R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
10-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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CRL.R.P. No.457 OF 2015

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Dated this the 10th day of April, 2015

ORDER

This revision petition is directed against judgment dated 20.02.2015 in Crl.A.No.20 of 2013 passed by the Court of Additional Sessions Judge-II, Thiruvananthapuram whereby and whereunder the conviction of the revision petitioner in S.T.No.258 of 2008 on the files of the Court of Judicial First Class Magistrate-2, Thiruvananthapuram was confirmed and the sentence imposed therefor was modified. The revision petitioner who was the accused in S.T.No.258 of 2008 was tried for an offence under section 138 of the Negotiable Instruments Act and the trial court found her guilty and convicted thereunder and sentenced to undergo simple imprisonment for a period of six months. The revision petitioner was also directed to pay an amount of ₹2,00,000/- with interest @ 9% per annum from 01.02.2007 till realisation as compensation to the complainant under section 357(3)

Cr.P.C. Evidently, no default clause was incorporated by the trial court. The revision petitioner took up the matter in appeal as Crl.A.No.20 of 2013. The appellate court, on careful appreciation of the evidence, found that the conclusions and findings arrived at by the trial court for entering conviction on the revision petitioner herein calls for no appellate interference and accordingly, confirmed the conviction. However, the appellate court modified the sentence. The substantive sentence of imprisonment for six months was reduced to imprisonment till the rising of court. The direction to pay compensation was also interfered with. The revision petitioner was sentenced to pay a fine of ₹2,00,000/- and the said amount on realisation was ordered to be paid to the complainant as compensation under section 357(1) Cr.P.C. In default of payment of fine, the revision petitioner was directed to undergo simple imprisonment for a period of four months. This revision petition is filed against the said judgment.

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

It is evident from the facts expatiated above that the courts below, on analysing the evidence adduced by the complainant/first respondent consisting of her own oral testimony as PW1 and the documentary evidence in Exts.P1 to P5 and also the defence evidence consisting of the testimonies of the revision petitioner as DW1 and her sister as DW2, arrived at the conclusion that the prosecution has succeeded in establishing the commission of offence under section 138, NI Act by the revision petitioner. The learned counsel for the revision petitioner submitted that the defence evidence was not properly considered by the trial court as also by the appellate court. It is further submitted that the first respondent has no source to raise the amount allegedly borrowed by the revision petitioner. The evidence of the complainant as PW1 was considered in detail by the courts below. With respect to the source of income, on being asked, PW1 explained that it was the money kept for purchasing gold ornaments for her daughter that was given to the accused for purchasing property. It is to be noted that during cross examination, a suggestion was put to PW1 as to whether it was Manikantan, the husband of PW2, who received money from

the complainant. PW1 denied the said suggestion. It is also evident from the discussion of the evidence made by the courts below that another suggestive question was also put to PW1 as to whether the case on hand was filed misusing Ext.P1 cheque entrusted to DW2 by DW1. In this context, it is to be noted that during the examination of DW2, Ext.P1 cheque was not at all put to her for identification. Another aspect also assumes relevance. DW1, while being examined, deposed to the effect that she enquired about the cheque with DW2 and she answered to the effect that the cheque in question was entrusted with the complainant when she availed a loan of ₹60,000/- from her. In this context, the failure on the part of the defence to put Ext.P1 cheque for identification to DW2 assumes relevance. In this context, it is to be noted that the discussion of the evidence by the courts below would reveal that the complainant has discharged her initial burden to get the benefit of presumption available under section 139, NI Act. In such circumstances, the question is whether with the evidence of DWs 1 and 2, the revision petitioner was able to dislodge the said benefit of presumption

available to the first respondent. The evidence of DWs 1 and 2 cannot be said to be one capable of creating doubt regarding the existence of a legally enforceable debt and for dislodging the presumption available to the complainant. In the absence of anything which would suggest that appreciation of evidence on record was nothing but an outcome of utter perverse appreciation of evidence I do not find any reason to interfere with the conclusions arrived at by the courts below concurrently to the effect that the complainant has succeeded in proving commission of offence under section 138, NI Act by the revision petitioner. In such circumstances, the conviction of the petitioner under section 138, NI Act is liable to be confirmed. Hence, it is confirmed. With respect to the sentence imposed on the revision petitioner for the conviction under section 138, NI Act evidently, the trial court besides sentencing the petitioner to undergo simple imprisonment for six months directed her to pay an amount of ₹2,00,000/- together with interest @ 9% per annum from 01.02.2007 till realisation as compensation under section 357(3) Cr.P.C. Evidently, the appellate court interfered with the sentence imposed by

the trial court and the substantive sentence was modified as imprisonment till the rising of court and direction to pay compensation was also interfered with. Taking into account the date of issuance of the cheque and the amount covered by the cheque the appellate court sentenced the petitioner to pay fine of ₹2,00,000/- and further ordered to pay the said amount on realisation to the complainant as compensation under section 357(1) Cr.P.C. The trial court has not incorporated any default clause. However, the appellate court directed the petitioner to undergo simple imprisonment for a period of four months in case of default in paying the amount of fine. In such circumstances, I do not find any reason at all for interfering with the sentence imposed by the appellate court for the conviction of the revision petitioner under section 138 N.I Act. The sentence imposed by the appellate court in modification of the sentence imposed by the trial court for the conviction for the offence under section 138 NI Act is the condign punishment for the same. In such circumstances, I do not find any reason to interfere with the sentence imposed on the revision petitioner. However, taking into account the

amount of fine imposed, the learned Magistrate is directed to keep in abeyance the execution of the sentence for a period of seven months so as to enable the revision petitioner to pay the amount of fine of ₹ 2,00,000/- and to appear before the trial court to suffer imprisonment till the rising of court within the stipulated time. In case of failure on the part of the petitioner to pay the amount of fine and to appear before the court to suffer imprisonment till the rising court within the stipulated period, the learned Magistrate shall take appropriate steps for executing the sentence expeditiously.

Subject to the above, this revision petition is dismissed.

Sd/-
C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

