

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

Crl.Rev.Pet.No. 462 of 2015 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 172/2013 OF THE ADDITIONAL
SESSIONS COURT-I, KOTTAYAM DATED 01-10-2014

AGAINST THE JUDGMENT IN ST NO.42/2012 of THE JUDICIAL FIRST CLASS
MAGISTRATE COURT-II, VAIKOM DATED 19-04-2013

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

LEELAMMA ABRAHAM, AGED 72 YEARS,
W/O.LATE VARGHESE ABRAHAM, MADAMPURATH
UDAYANAPURAM PO, VADAKKEMURY KARA, VADAKKEMURY VILLAGE
VAIKOM TALUK. KOTTAYAM DISTRICT

BY ADVS.SRI.P.S.NANDANAN
SRI.P.N.ANOOP
SRI.SANTHOSH PETER (MAMALAYIL)

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

1. GENTLEMEN CHIT FUNDS COMPANY (INDIA) PVT.LTD.
(HO) ANAND BAZAR, 1ST FLOOR, THALAYOLAPARAMBU PO
VADAYAR VILLAGE, REP. BY ITS MANAGER
N.APPUKUTTAN NAIR, S/O.NEELAKANDA PILLAI
MELEZHATHU HOUSE, UDAYANAPURAM PO, VADAKKEMURY KARA
VADAKKEMURY VILLAGE, VAIKOM TALUK-686 143.

2. STATE OF KERALA,
REP. 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 09-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

dlk

C.T.RAVIKUMAR, J

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Dated this the 9th day of April, 2015

ORDER

This revision petition is filed against the judgment in Crl.A.No.172/2013 of the court of the Additional Sessions Judge-I, Kottayam. The revision petitioner was the accused in S.T.No.42/2012 on the files of the court of the Judicial First Class Magistrate-II, Vaikom. For the conviction under section 138 of the Negotiable Instruments Act the trial court sentenced the petitioner to undergo simple imprisonment for a period of six months and also directed him to pay a compensation of ₹ 1,39,000/- to the complainant under section 357(3) of the Code of Criminal Procedure and to undergo simple imprisonment for a further period of six months, in case of default of effecting payment of compensation. The appellate court confirmed the conviction, but modified the sentence. The substantive sentence to undergo simple imprisonment for six months was set aside and the revision petitioner was sentenced to pay a fine of ₹ 1,83,000/- and the amount of fine, if realised was directed to be given as compensation to the complainant under section 357 (1) Cr.P.C. and in case of default in payment of fine, to undergo

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simple imprisonment for a period of three months. This revision petition is filed in the said circumstances.

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

3. Evidently, the courts below on appreciation of the evidence on record consisting of the oral testimony of PW1 and the documentary evidence in Exts.P1 to P10 on the side of the complainant and the oral testimonies of DW1 and DW2 and the documentary evidence in Ext.D1 on the side of the revision petitioner/accused found him guilty and convicted concurrently, under section 138 of the N.I.Act. No manifest error was brought out by the revision petitioner to make this Court to interfere with the same in exercise of revisional jurisdiction. I have carefully gone through the judgments of the courts below. However, I find nothing to hold that they suffer from any illegality or infirmity warranting interference. The petitioner has not brought out a case to convince this Court that the conclusions and findings of the courts below are totally against the weight of evidence on record. In the circumstances, the conviction of the revision petitioner under section 138 of the N.I.Act is liable to be confirmed and accordingly, it is confirmed.

4. As noticed hereinbefore, the appellate court while confirming the conviction modified the sentence imposed

on the revision petitioner. The substantive sentence to undergo simple imprisonment for six months was set aside and the revision petitioner was sentenced to pay a fine of ₹1,83,000/- and the amount of fine , if realised, was directed to be given as compensation under section 357(1) Cr.P.C to the complainant. In default of payment of compensation he was directed to undergo simple imprisonment for a period of three months. In the light of the decisions of the Hon'ble Apex Court in **Damodar S. Prabhu v. Sayed Babalal H** reported in AIR 2010 SC 1907 and **Kaushalya Devi Massand v. Roopkishore** reported AIR 2011 SC 2566 I am of the view that pecuniary aspect has to be given priority over the punitive aspect. In the said decisions the Hon'ble Apex Court held that the offences under section 138 of the N.I.Act are basically of civil nature and that the intention of the legislature in enacting the same is to make the drawer of the cheque to pay the amount of fine, by giving an opportunity and not to sent him to jail. Taking into account the entire circumstances as revealed above I do not find any reason to interfere with the sentence imposed by the appellate court for the conviction of the revision petitioner under section 138 of the

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N.I.Act. In such circumstances, the modified sentence imposed by the appellate court on the revision petitioner for the conviction under section 138 of the N.I.Act is also liable to be confirmed and accordingly, it is confirmed. When this Court was about to dismiss this revision petition without any qualification the learned counsel appearing for the revision petitioner submitted that the revision petitioner may be granted some reasonable time to effect the payment of the fine amount. In the said circumstances, the learned magistrate is directed to keep in abeyance the execution of the sentence for a period of eight months to enable the petitioner to effect payment of amount of fine within the above stipulated time. Needless to say that in case of failure on the part of the revision petitioner to comply with the said direction within the above stipulated time, the trial court shall take appropriate steps for executing the sentence, in accordance with law.

Subject to the above this revision petition is dismissed.

Sd/-

C.T.RAVIKUMAR,JUDGE.

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