

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. 467 of 2015 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 308/2013 of SESSIONS
COURT,KOTTAYAM DATED 19-01-2015

AGAINST THE JUDGMENT IN ST NO. 135/2012 of JUDICIAL FIRST CLASS
MAGISTRATE COURT-III, KANJIRAPPALLY DATED 17-07-2013

REVISION PETITIONER/APPELLANT/ACCUSED):

MAHESH V.M., S/O.MOHAN.K,
VENNILATHU HOUSE, ANAKALLU P.O.,
KOTTAYAM

BY ADV. SRI.A.K.HARIDAS

RESPONDENTS/COMPLAINANT & STATE:

1. VARGHESE THOMAS, S/O. THOMAS,
ADIMAKKAL HOUSE, KANJIRAPPALLY P.O.,
KOTTAYAM - 686507
2. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682030

R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

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

Crl.R.P. No.467 of 2015

Dated this the 9th day of April, 2015

ORDER

This revision petition is filed against the judgment in Crl.A.No.308/2013 of the Additional Sessions Court-I, Kottayam. The revision petitioner was the accused in S.T.No.135/2012 on the files of the court of the Judicial First Class Magistrate-III, Kanjirappally. 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 three months and to pay an amount of ₹50,000/- with 9% interest from 1.10.2010 till 17.7.2013 viz., ₹62,560/- to the complainant under section 357(1) of the Code of Criminal Procedure and to undergo simple imprisonment for a further period of four months, in case of default in payment of fine. The appellate court confirmed the conviction but modified the sentence. The substantive sentence to undergo simple imprisonment for three months was set aside and the revision petitioner was sentenced

to pay a fine of ₹68,000/- and the amount of fine, if realised was directed to be given as compensation to the complainant under section 357(1) Cr.P.C. In default of payment of fine the revision petitioner was directed to undergo simple imprisonment for a period of one month. This revision petition is filed in the said circumstances.

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

3. Obviously, the courts below on appreciation of the evidence on record consisting of the oral testimony of the complainant/the first respondent herein as PW1 and the documentary evidence in Exts.P1 to P6 found the revision petitioner guilty and convicted him concurrently, under section 138 of the N.I.Act. The revision petitioner had not adduced any evidence in defence, either oral or documentary. No manifest illegality resulting in gross miscarriage of justice was brought to the notice of this Court so as to compel invocation of the revisional jurisdiction. Having gone through the judgments of the courts below I do not find any reason to hold that they are

infected with illegality or infirmity warranting interference. In the circumstances, the conviction entered against the revision petitioner concurrently, for the offence 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 by the trial court. The substantive sentence to undergo simple imprisonment for three months was set aside and the revision petitioner was sentenced to pay a fine of ₹68,000/- and the amount of fine was directed to be given as compensation under section 357(1) Cr.P.C to the complainant , if realised. In default of payment of fine the revision petitioner was directed to undergo simple imprisonment for a period of one month. 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 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 three 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 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.

dlk