

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

Crl.Rev.Pet.No. 1453 of 2008 ()

AGAINST THE JUDGMENT IN CRA 207/2007 of ADDL.SESIONS
JUDGE,PATHANAMTHITTA DATED 07-04-2008

AGAINST THE JUDGMENT IN ST 379/2005 of C.J.M.-PATHANAMTHITTA
DATED 14.6.2007

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

M.R.VENUGOPALANACHARRI, AGED 53,
S/O.RAMANACHARI, KUZHIKKALA MEMURIYIL, KANAMUKKU
NARANGANAM P.O., KOZHENCHERRY TALUK
PATHANAMTHITTA DISTRICT.

BY ADVS.SRI.VARUGHESE M EASO
SRI.VIVEK VARGHESE P.J.
SRI.P.J.VINOD JOSEPH
SMT.ELIZEBETH MEERA

RESPONDENT(S)/RESPONDENTS/COMPLAINANT::

1. V.K.THOMAS, KOIKALETHU HOUSE,
KOZHENCHERRY P.O., KOZHENCHERRY TALUK,
PATHANAMTHITTA DISTRICT.
2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.ARUN.B.VARGHESE
BY PUBLIC PROSECUTOR SMT.LILLY LESLIE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
26-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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V.K.MOHANAN, J.

Crl.R.P.No.1453 of 2008

Dated this the 26th day of March, 2015.

O R D E R

The accused in a prosecution for the offence punishable under section 138 of the NI Act is the revision petitioner. In this proceedings, he challenges the judgment dated 14.6.2007 in S.T.No.379/05 of the court of Chief Judicial Magistrate-Pathanamthitta, as well as the judgment dated 7.4.2008 in Crl.A.No.207/07 of the court of Additional Sessions Judge, Pathanamthitta.

2. The case of the complainant is that the accused indebted a sum of Rs.65,000/- to the complainant and towards the discharge of the said liability, the revision petitioner issued Ext.P1 cheque dated 11.4.2005 for an amount of Rs.65,000/-, which when presented for encashment, dishonoured for the reason that funds insufficient in the account of the accused and it is the

further case of the complainant that though statutory notice was served on the accused, no amount has been paid by the accused and thus according to the complainant, the accused has committed the offence punishable under section 138 r/w 142 of the NI Act.

3. With the above allegation, the complainant approached the trial court by filing a complaint, upon which cognizance was taken and instituted S.T.No.379/05 and during the trial of the said case, the complainant was examined as PW1 and produced Exts.P1 to P5 documents. No evidence whatsoever adduced from the side of the defence. The trial court finally found that the complainant has succeeded in establishing the guilt of the accused and accordingly the revision petitioner is found guilty and he is convicted under section 138 r/w section 142 of the NI Act. On such conviction, the accused is sentenced to undergo simple imprisonment for 3 months under section 138 r/w section 142 of the NI Act and the accused is also ordered to pay a sum of Rs.65,000/- to the complainant by way of

compensation under section 357(3) of Cr.P.C. and on default, he was directed to undergo simple imprisonment for 2 months. Aggrieved by the above order of conviction and sentence and to pay compensation, the accused preferred Crl.A.No.207/07 and the learned Judge of the lower appellate court by his judgment dated 7.4.2008 allowed the appeal in part. Accordingly, while confirming the conviction, the sentence was modified and reduced to one month simple imprisonment and it was also directed to pay fine of Rs.65,000/-, which shall be paid as compensation to the 1st respondent under section 357(1) of Cr.P.C. and in default, he was directed to undergo simple imprisonment for a further period of one month.

4. Heard Sri.Varughese M.Easo, the learned counsel for the revision petitioner and Sri.Arun B.Varghese, the learned counsel appearing for the 1st respondent.

5. The learned counsel for the revision petitioner fairly submitted that the revision petitioner has no contention on merit and the revision petitioner wants some time to

compensate the respondent/complainant and the revision petitioner is ready to pay some additional amount after deducting the amount already paid before the trial court while executing the bail order. The learned counsel for the respondent submitted that the respondent may be permitted to withdraw the amount already deposited by the petitioner.

6. As the revision petitioner has no contention on merit, I am of the view that, he can be granted some time to compensate the complainant. However, it is relevant to note that the cheque in question is dated 11.4.2005 for an amount of Rs.65,000/- and so far, no amount is paid to the complainant. As per the sentence imposed on the revision petitioner, he has to undergo simple imprisonment for one month. It is the above order of sentence, sought to be modified. Having regard to the facts and circumstances involved in the case, I am of the view that, the sentence imposed by the trial court and modified by the lower appellate court can be again modified and reduced into

simple imprisonment till raising of the court. However, considering the fact that the cheque in question is dated 11.4.2005, while modifying the sentence and reducing the same in favour of the petitioner, it is only just and proper to adequately compensate the respondent/complainant. So, according to me, the amount fixed by the court below as compensation can be enhanced.

In the result, this revision petition is disposed of confirming the conviction of the revision petitioner for the offence under section 138 of the NI Act as ordered by the courts below. The sentence of imprisonment ordered by the trial court and modified by the lower appellate court is again modified and reduced to till the raising of the court and the revision petitioner is directed to pay a total sum of Rs.1,00,100/- as compensation to the respondent/complainant within 45 days from today. The revision petitioner is free to pay the amount, either directly to the complainant or through the court below, which ever subject to the satisfaction of the learned Magistrate of the trial

court. Accordingly, the petitioner is directed to appear before the trial court on **11.5.2015** to receive the modified sentence and to pay the compensation. The respondent/complainant is free to withdraw Rs.25,000/- already deposited by the revision petitioner in the trial court in terms of the order of this Court dated 9.5.2008 in Crl.M.A.No.4395/08 in this revision petition. It is made clear that, the revision petitioner is directed and need to pay the remaining amount of Rs.75,100/- either on the date of his appearance or any date prior to that and if there is any failure on the part of the revision petitioner in paying the sum of Rs.75,100/- within the time stipulated, the trial court is free to issue revised warrant against the revision petitioner and on realisation of the amount, the same can be given to the complainant.

Sd/-
V.K.MOHANAN,
Judge.

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P.A.to Judge