

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 5TH DAY OF MAY 2015/15TH VAISAKHA, 1937

Crl.Rev.Pet.No. 480 of 2015 ()

CRA 62/2013 of ADDL. SESSIONS COURT-II, TRIVANDRUM DATED 17-10-2014

CC 1/2012 of JUDICIAL FIRST CLASS MAGISTRATE-III, NEDUMANGAD DATED 07-01-2013

REVISION PETITIONER/PETITIONER: (APPELLANT-ACCUSED):

SAJEEV.R, AGED 46 YEARS,
S/O RAVEENDRAN, RESIDING AT KUZHIYILATHU MELATHIL,
KIZHAVOOR, MUKHATHALA PO, KOLLAM.

BY ADV. SRI.HARISH GOPINATH

RESPONDENTS/RESPONDENTS-STATE AND COMPLAINANT):

1. STATE OF KERALA
REPRESENTED BY IT SPUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.

2. MURALEEDHARAN PILLAI,
S/O VASUDEVAN PILLAI, NILAVU, ARAMPUNNA,
ELAMBAL PO, PUNALLOOR, KOLLAM.

R2 BY ADV. SRI.B.MOHANLAL
R BY SRI. JITHESH, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 05-05-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K. RAMAKRISHNAN, J.

Crl.R.P. No. 480 of 2015

Dated this the 5th day of May, 2015.

ORDER

The accused in C.C. No. 1 of 2012 on the file of the Judicial First Class Magistrate-III, Nedumangad is the revision petitioner herein. The case was taken on file on the basis of a private complaint filed by the second respondent against the petitioner alleging common offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act').

2. The case of the complainant in the complaint was that the revision petitioner borrowed a sum of ₹1,50,000/- from the second respondent on 19.08.2007 from his residence at Punalur and in discharge of the liability, he issued Ext.P1 cheque with date 19.09.2007 drawn on Canara Bank from the account maintained by him which when presented was dishonoured for the reason 'funds insufficient' as evidenced by Ext.P2 dishonour memo and this was intimated to the complainant by Ext.P4 cheque return memo. The complainant

issued Ext.P3 notice vide Ext.P6 series of postal receipts and the same was returned with the endorsement 'unclaimed'. The revision petitioner had not paid the amount and so he had committed the offence punishable under Section 138 of Act. Hence the complaint.

3. Earlier when the revision petitioner appeared before the court below, particulars of offence were read over and explained to him and he pleaded not guilty. In order to prove the case of the complainant, the complainant himself was examined as PW1 and Exts.P1 to P5 series and P6 series were marked on his side. After closure of the complainant's evidence, the revision petitioner was questioned under Section 313 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') and he denied all the incriminating circumstances brought against him in the complainant's evidence. He had further stated that he had some property transaction with one Sathyan and he had forcefully taken four cheques from him and misusing one of the cheques, the present complaint has been filed by the complainant with whom he had no transaction. No

defence evidence was adduced on his side at that time. After considering the evidence on record, the learned Magistrate earlier found the revision petitioner guilty under Section 138 of the Act and convicted and sentenced him thereunder. Against the same, he filed an appeal before the Sessions Court, Thiruvananthapuram and as requested by him, for giving an opportunity to adduce defence evidence, the appeal was allowed and remanded to the court below and after remand, no defence evidence was adduced on his side and thereafter the learned Magistrate found the revision petitioner guilty of the offence punishable under Section 138 of the Act and convicted him thereunder and sentenced him to undergo simple imprisonment for six months and also to pay a fine of ₹ 1,50,000/- and in default to pay the amount, to undergo simple imprisonment for three months and it is further ordered that the fine amount if realized, the same shall be paid to the complainant as compensation under Section 357 (1)(b) of the Code. Aggrieved by the same, the revision petitioner filed Crl. Appeal No. 62 of 2013 before the Sessions Court, Thiruvananthapuram which was

made over to Additional Sessions Court –II, Thiruvananthapuram. The learned Additional Sessions Judge allowed the appeal in part confirming the order of conviction and sentenced to pay fine with default sentence and further direction to pay compensation out of the same, but reduced the substantive sentence of imprisonment to imprisonment till the rising of the court. Aggrieved by the same, the present revision has been filed by the revision petitioner/accused before the court below.

4. Considering the scope of enquiry and also the nature of the conditions raised and since the second respondent appeared through counsel, this Court felt that the revision can be admitted, heard and disposed of today itself after hearing both sides. So the revision is admitted, heard and disposed of today itself.

5. The counsel for the revision petitioner submitted that there is no proper appreciation of evidence and the execution of the cheque has not been proved in accordance with law. Further, no opportunity has been given to the revision petitioner

to adduce defence evidence as well. According to him, the courts below were not justified in convicting the petitioner for the offence alleged.

6. On the other hand, the learned counsel for the second respondent submitted that the concurrent finding of the courts below need not be interfered and the maximum leniency has been shown by the courts below in awarding the sentence as well. Heard the Public Prosecutor as well.

7. The case of the complainant in the complaint was that the revision petitioner borrowed a sum of ₹1,50,000/- and issued Ext.P1 cheque in discharge of the liability. The case of the revision petitioner was one of total denial. It is true that in a case where the execution of the cheque is denied, the burden is on the complainant to prove the facts. In order to prove his case, the complainant himself was examined as PW1 and deposed in support of his case in the complaint. Except giving a suggestion to PW1 that there was no transaction between the complainant and the revision petitioner and the cheque given to Satyan was misused, which was denied by the complainant, no

other evidence was adduced on the side of the accused to prove this fact. Further, it is seen from the judgment of the trial court that earlier he was convicted and an appeal was preferred and the appeal was allowed and was remanded for giving an opportunity to the revision petitioner to adduce defence evidence. But, in spite of that, no defence evidence was adduced on his side. Further, PW1 had categorically stated that the cheque was given by the revision petitioner in discharge of the liability and it was a post dated cheque. The fact that it was issued from the account of the revision petitioner was not in dispute. Though he had a case that one Sathyan had forcefully taken four cheques, he had not taken any steps against the said Sathyan for such illegal act committed by him. So under the circumstances, in the absence of any evidence adduced on the side of the revision petitioner to prove his case, the courts below were perfectly justified in relying on the evidence of PW1 and the documents produced and coming to a conclusion that Ext.P1 cheque was issued in discharge of a legally enforceable debt and the cheque was dishonoured for want of

sufficient funds and in spite of notice issued, he did not pay the amount and thereby he had committed the offence punishable under Section 138 of the Negotiable Instruments Act and rightly convicted him for the said offence and the concurrent finding of the courts below on this aspect do not call for any interference.

8. As regards the sentence is concerned, though court below had imposed a substantive sentence of six months apart from imposing a fine of ₹1,50,000/- with the default sentence of three months and directing the fine realised payable to the complainant as compensation, the appellate court while confirming the latter part of the sentence set aside the substantive sentence and reduced the same to imprisonment till the rising of the court. So maximum leniency has been shown by the appellate court while imposing the sentence as well. I do not find any reason to interfere with the sentence imposed by the court below as it cannot be said to be either excessive or harsh.

9. The counsel for the revision petitioner prayed for six

months' time for payment of the amount and that was opposed by the counsel for the second respondent. Considering the amount involved, this Court feels that five months' time can be granted to the revision petitioner to pay the amount. So the revision petitioner is granted time till 05.10.2015 to pay the amount. Till then, the execution of the sentence is directed to be kept in abeyance.

With the above directions and observations, this revision petition is dismissed.

Registry is directed to communicate this order to the concerned court immediately.

sd/- K. RAMAKRISHNAN, JUDGE.

