

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 17TH DAY OF APRIL 2015/27TH CHAITHRA, 1937

Crl.Rev.Pet.No. 489 of 2015 ()

AGAINST THE JUDGMENT IN CRA 51/2010 of COURT OF ADDL. SESSIONS JUDGE,
(ADHOC-I), KOTTAYAM DATED 12-01-2011

AGAINST THE JUDGMENT IN ST 2074/2008 of COURT OF JUDICIAL FIRST CLASS
MAGISTRATE-II(MOBILE), KOTTAYAM DATED 31-10-2009

REVISION PETITIONER/APPELLANT/ACCUSED:

K.G.HARIKUTTAN
PULIPPURAMKUNNEL HOUSE, THIRUVANCHOOR PO,
KOTTAYAM

BY ADV. SRI.A.K.HARIDAS

RESPONDENTS/RESPONDENTS/STATE & COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM 682031.

2. VIMALA ANAND
SISIRAM HOUSE, KUDAMALLOOR PO,
KOTTAYAM 686001.

R1 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 17-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.R.P.No.489 of 2015

Dated 17th April, 2015

ORDER

This revision petition is directed against the judgment in Crl.A.No.51 of 2010 of the Court of Additional Sessions Judge (Adhoc)-I, Kottayam confirming the conviction and modifying the sentence imposed on the revision petitioner in S.T.No.2074 of 2008 of the Court of Judicial First Class Magistrate-II (Mobile), Kottayam. The revision petitioner was tried for the offence punishable under Section 138 of the Negotiable Instruments Act. The allegation of the second respondent/complainant is that the revision petitioner issued Ext.P1 cheque for an amount of ₹ 1,00,000 in discharge of a legally enforceable debt. But, when the complainant presented the cheque for encashment the same was dishonoured for insufficient fund in the account maintained by the revision petitioner. Thereupon, the complainant issued a notice intimating the revision petitioner of the dishonour of the cheque and calling upon him to pay the amount due. However, the revision petitioner refused to accept the notice. It is the failure on the part of the revision petitioner to effect payment within the statutorily prescribed period that constrained the complainant to

file the complaint which was taken on file and numbered as S.T.No.2074 of 2008. On due process the revision petitioner appeared before the court and the particulars of the charge were read over and explained to him and the revision petitioner pleaded not guilty. The complainant got herself examined as PW1 and got marked Exts.P1 to P6 to bring home the charge against the revision petitioner. On closure of the evidence of the complainant the revision petitioner was examined under Section 313, Cr.P.C. and he denied all the incriminating circumstances put to him. However, no defence evidence was adduced. On a careful evaluation of the evidence on record the trial court found that the complainant has succeeded in establishing the fact that the revision petitioner has committed the offence under Section 138 of the Negotiable Instruments Act. Consequently, he was convicted thereunder and sentenced to undergo simple imprisonment for a period of one month and also to pay a fine of ₹ 1,00,000/-. In default of payment of fine he was directed to undergo simple imprisonment for a further period of two months. The amount of fine, on realisation, was directed to be paid to the complainant as compensation under Section 357(1) Cr.P.C. The revision petitioner took up the matter in appeal as Crl.A.No.51 of 2010 before the Court of Additional Sessions Judge (Adhoc-I), Kottayam. Various contentions

were raised against the judgment of the trial court. However, the learned Additional Sessions Judge found no ground to invoke the appellate jurisdiction. It was found that the conclusions and findings of the trial court are perfectly in tune with the evidence adduced. In the said circumstances, the appellate court confirmed the conviction but, at the same time, modified the sentence. The substantive sentence was reduced to simple imprisonment till rising of the court. The sentence to pay a fine of ₹ 1,00,000/-, the default sentence and also the direction to pay the amount of fine, on realisation, to the complainant as compensation under Section 357(1) Cr.P.C. were maintained. The captioned revision petition has been filed against the said judgment confirming the conviction and modifying the sentence as aforesaid.

2. I have heard the learned counsel for the revision petitioner and also the learned Public Prosecutor.

3. As noticed hereinbefore, conviction was concurrently entered against the revision petitioner and the sentence imposed against the revision petitioner by the trial court was modified by the appellate court as mentioned above. In such circumstances, interference with the conviction by exercising the revisional jurisdiction is called for only if the

revision petitioner succeeds in establishing that the appreciation of evidence by the trial court as also the appellate court is utterly perverse or that the conclusions reached are totally against the weight of the evidence. Having carefully gone through the pleadings in this revision petition and also after hearing the learned counsel for the revision petitioner I have no hesitation to hold that no such grounds were made out by the revision petitioner to compel this Court to exercise the revisional jurisdiction to interfere with the concurrent finding of conviction entered against him. No error in law was also brought to my notice. Virtually, the revision petitioner took up only the contentions which were unsuccessfully raised before the appellate court. No infirmity or illegality warranting an interference was brought out. In the said circumstances, the conviction entered against the revision petitioner under Section 138 of the Negotiable Instruments Act is liable to be confirmed and accordingly, it is confirmed.

4. Obviously, the trial court sentenced the revision petitioner to undergo simple imprisonment for a period of one month and also to pay a fine of ₹ 1,00,000/- and in default of payment of fine he was ordered to undergo simple imprisonment for two months. The amount of fine, on realisation, was directed to be paid to the complainant as

compensation under Section 357(1) Cr.P.C. After a careful evaluation of the evident on record the appellate court interfered with the sentence and modified it. The substantive sentence to undergo simple imprisonment for one month was reduced to simple imprisonment till rising of the court. However, the direction to pay a fine of ₹ 1,00,000/- and in default of payment of fine to undergo simple imprisonment for two months and also the direction to pay the amount of fine, on realisation, to the complainant as compensation under Section 357(1) Cr.P.C. were maintained. Evidently, the appellate court modified the jail sentence to imprisonment till the rising of the court. Ext.P1 cheque is dated 28.3.2006 and the cheque amount is ₹ 1,00,000/-. I do not find any reason whatsoever to interfere with the sentence imposed by the trial court which was modified by the appellate court as it cannot be said to be grave or excessive. Hence, it is also liable to be confirmed and accordingly, it is confirmed. When this Court was about to dismiss the revision petition without any qualification the learned counsel for the revision petitioner submitted that some reasonable time may be granted to the revision petitioner to effect payment of the amount of fine in view of the straitened circumstances. Having heard the learned counsel for the revision petitioner while dismissing this revision petition I am inclined to direct the learned Magistrate to keep in abeyance execution of the

sentence for a period of five months to enable the revision petitioner to pay the fine amount and to appear before the trial court to suffer the sentence, within the above stipulated time. Ordered accordingly. In case of failure on the part of the revision petitioner to pay the amount of fine and to appear before the court to undergo imprisonment till rising of the court, within the above stipulated time, the learned Magistrate shall take appropriate steps for execution of the sentence, in accordance with law, forthwith.

Subject to the above, this revision petition is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS