

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. 494 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN CRA 189/2010 of COURT OF ADDITIONAL
SESSIONS JUDGE (ADHOC)-II, KOTTAYAM DATED 18-04-2013

AGAINST THE JUDGMENT IN ST 165/2008 of COURT OF JUDICIAL FIRST CLASS
MAGISTRATE - II, ETTUMANUR DATED 31-03-2010

REVISION PETITIONER:

THOMAS JOHN, AGED 57 YEARS
S/O.JOHN KUDUMBAKUZHIYIL HOUSE, KANAKKARI P.O
KOTTAYAM DISTRICT.

BY ADVS.SRI.A.K.HARIDAS
SRI.P.C.EMMANUEL

RESPONDENTS:

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1. BIJU MATHEW
KULAVELIL HOUSE, KURUMULLOOR P.O,
KOTTAYAM DISTRICT
KOTTAYAM 686 001.
 2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM. 682 031.

R2 BY PUBLIC PROSECUTOR SRI.N.SURESH

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.494 of 2015

Dated 17th April, 2015

ORDER

This revision petition is directed against the conviction concurrently entered against the revision petitioner under section 138 of the Negotiable Instruments Act. The revision petitioner was tried for the said offence before the court of Judicial First Class Magistrate-II, Ettumanoor in S.T.No.165/2008. After complying with all the procedures of trial for an offence under section 138 of the N.I.Act and on appreciation of the evidence adduced by the first respondent/complainant the trial court found the revision petitioner guilty and consequently convicted him thereunder and sentenced to undergo imprisonment till rising of the court. He was also directed to pay compensation of ₹ 1,05,000/- as per Section 357(3) Cr.P.C. and in default of payment of compensation to undergo simple imprisonment for a period of three months. The revision petitioner unsuccessfully challenged the same in Crl.A.No.189 of 2010. The appellate court confirmed the conviction as also the sentence. This revision petition is filed in the aforesaid circumstances.

2. The case of the first respondent/complainant is that the revision petitioner borrowed an amount of ₹ 1,30,000/- from him and in discharge of the said legally enforceable debt he issued Ext.P1 cheque. The first respondent/complainant got himself examined as PW1 and got marked Exts.P1 to P6 to bring home the charge against the revision petitioner. It is to be noted that the revision petitioner has not mounted the box and in fact, he has not adduced any evidence in defence. It was on appreciation of the evidence on record that the trial court as also the appellate court arrived at the conclusion that the oral evidence of PW1 with Exts.P1 to P6 are sufficient to establish the charge of commission of offence under section 138 of the N.I.Act against the revision petitioner. Having carefully considered the judgment and upon hearing the learned counsel for the revision petitioner I do not find any reason to disagree with the findings of the courts below for entering conviction against the revision petitioner. In other words, no ground whatsoever was made out by the revision petitioner to interfere with the conviction concurrently entered against him for the offence under section 138 of the N.I.Act in exercise of revisional jurisdiction. In the circumstances, the conviction of the petitioner for the offence under Section 138, N.I. Act is confirmed.

3. Upon convicting the revision petitioner under section 138 of the N.I.Act the trial court sentenced him to undergo imprisonment till

rising of the court and to pay a compensation of Rs.1,05,000/- to the complainant with a default clause. The appellate court, evidently, considered the requirement, if any, to interfere with the sentence imposed by the trial court and ultimately found that no appellate interference is called for in the facts and circumstances and confirmed the sentence as well. As noticed hereinbefore, the substantive sentence imposed for the conviction under section 138 of the N.I. Act against the revision petitioner is only imprisonment till rising of the court. The amount directed to be paid as compensation is ₹ 1,05,000/- and the said amount is less than the cheque amount. In such circumstances, when once it is found that there is no scope for interfering with the conviction in exercise of the revisional jurisdiction I am of the considered view that there is no reason at all for interfering with the sentence as well. Accordingly, the sentence imposed on the revision petitioner for the offence under Section 138, N.I. Act is also confirmed. When this Court was about to dismiss this revision petition without any qualification the learned counsel for the revision petitioner submitted that the revision petitioner may be granted some reasonable time to pay the amount of compensation. Taking note of the fact that the amount directed to be paid as compensation is ₹ 1,05,000/- I am of the view that even while confirming the conviction as also the sentence it will only be in the interest of justice, to direct the learned Magistrate to keep in abeyance

the execution of the sentence for a period of three months so as to enable the revision petitioner to appear before the trial court to pay the amount of compensation and to suffer imprisonment till rising of the court. Ordered accordingly. Needless to say that in case the revision petitioner fails to appear before the trial court to pay the amount of compensation also to suffer the sentence of imprisonment till rising of the court, within the above stipulated time, appropriate steps shall be taken by the trial court in accordance with law, forthwith.

Subject to the above, this revision petition is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS