

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

Crl.Rev.Pet.No. 1123 of 2011 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 536/2009 of ADDITIONAL DISTRICT
& SESSIONS COURT (ADHOC), MAVELIKKARA DATED 31-12-2010

AGAINST THE JUDGMENT IN ST NO. 511/2008 of JUDICIAL FIRST CLASS
MAGISTRATE COURT - II, MAVELIKKARA DATED 31-10-2009

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

V.V.UDAYAKUMAR, S/O.VISWAMBHARAN,
VISWASADANAM, PALAMEL MURI,
PADANILAM P.O.
NOORANAD VILLAGE.

BY ADVS.SRI.M.V.THAMBAN
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN
SMT.REVATHY P.NAIR

RESPONDENTS/STATE & COMPLAINANT:

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

2. R.G.UNNITHAN, S/O.RAMAN UNNITHAN,
CHAITHANYA, PADANILAM P.O., NEDUKULANJI MURI
NOORNADU, ALAPPUZHA DISTRICT, PIN-690529.

R2 BY ADVS. SRI.UNNIKRISHNAN.V.ALAPATT
SMT.ANITHA M.N. (EKM)
R1 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
31-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

dlk

C.T.RAVIKUMAR, J

Crl.R.P. No.1123 of 2011

Dated this the 31st day of March, 2015

ORDER

This revision petition is filed against the judgment in Crl.A.No.536/2009 of the Additional District & Sessions Judge Fast Track Court (Adhoc), Mavelikkara. The revision petitioner was the accused in S.T.No.511/2008 on the files of the court of the Judicial First Class Magistrate-II, Mavelikkara. 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. He was also directed to pay a compensation of ₹75,000/- to the complainant under section 357(3) of the Code of Criminal Procedure and to undergo simple imprisonment for a further period of four months, in case of default of effecting payment of compensation. The appellate court dismissed the appeal confirming the conviction as also the sentence. This revision petition is filed in the said circumstances.

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

3. As noticed hereinbefore, the appellate court confirmed the conviction as also the sentence imposed by the trial court. I have carefully considered the contentions raised by the revision petitioner. The discussion of evidence by the courts below would make it abundantly clear that the evidence on record revealed the existence of a legally enforceable liability and that Ext.P1 cheque was issued to discharge the said legally enforceable debt. The courts below have also come to the conclusion, on appreciation of evidence, that the revision petitioner had failed to rebut the presumption available to the second respondent/complainant under section 139 of the N.I.Act. It was such consideration that culminated in the conviction of the petitioner, concurrently. No grounds whatsoever permitting interference with conviction entered into concurrently, was made out by the revision petitioner and in such circumstances, the conviction of the revision petitioner is liable to be confirmed and accordingly, it is confirmed.

4. Now I will consider the question whether the sentence imposed on the revision petitioner for the conviction invites interference. 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 been given priority over the punitive aspect in a case of dishonour of cheque. 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. In the said circumstances and taking note of the submissions made by the learned counsel for the revision petitioner that the petitioner would effect payment of compensation of ₹75,000/- in case some reasonable time is granted I am of the view that the sentence imposed on the petitioner requires modification. In such circumstances while confirming the conviction the sentence imposed on the petitioner for the conviction under section 138 of the N.I.Act is modified and the substantive sentence to undergo simple imprisonment for three months is reduced to imprisonment till the rising of the court. However, the direction to pay compensation of ₹

75,000/- to the complainant under section 357(3), Cr.P.C and the default clause incorporated by the appellate court are maintained. The learned magistrate is directed to keep in abeyance the execution of the sentence of imprisonment and also the steps to recover amount of compensation for a period of three months to enable the petitioner to effect payment of amount of compensation and the appear before the court to undergo imprisonment till the rising of the court, within the above stipulated time. Needless to say that in case of failure on the part of the petitioner to comply with the said directions 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