

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

Crl.Rev.Pet.No. 730 of 2015 ()

AGAINST THE JUDGMENT IN CRA 112/2014 of DISTRICT & SESSIONS COURT,
KASARAGOD 24-02-2015

AGAINST THE JUDGMENT IN C.C 694/2012 of J.M.F.C.-II, HOSDRUG
DATED 05-06-2014

REVISION PETITIONER/APPELLANT/ACCUSED:

SUMESH, S/O.P.RAMACHANDRAN,
KARUVANCHERY, NILESHWARAM VILLAGE AND POST,
HOSDURG TALUK, KASARGOD.

BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM
SMT.K.R.MONISHA

RESPONDENT/RESPONDENT/COMPLAINANT:

1. K.V. KARUNAKARAN, S/O.KUNHIKORAN VELICHAPPADAN,
KARUNALAYAM,KURUDIL, MADIKAI VILLAGE,
HOSDURG TALUK,
P.O.BANGALAM, KASARGOD – 671 314.
2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM – 682 031.

R1 BY
R2 BY PUBIC PROSECUTOR ABHIJETT LESSLI

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 17-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.UBAID, J.
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**Crl.R.P No. No.730 of 2015**  
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Dated this the 17th June, 2015

ORDER

The revision petitioner herein challenges the conviction and sentence against him under Section 138 of the Negotiable Instruments Act. The 1st respondent herein filed a complaint against him before the Judicial First Class Magistrate-II, Hosdurg with the allegation that a cheque for ₹ 1,00,000/- issued by the revision petitioner in his favour in discharge of a legally enforceable debt was bounced due to insufficiency of funds, and in spite of statutory notice, the revision petitioner failed to make payment. After necessary enquiry, the learned Magistrate took cognizance as C.C No. 694 of 2012.

2. The revision petitioner herein entered appearance in the trial court and pleaded not guilty when the substance of the accusation was read over and explained by the learned Magistrate. Thus. He claimed to be tried. The complainant examined himself as PW1 and proved Exts.P1 to P7 (b) documents during trial. When

examined under Section 313 Cr.P.C also, the accused denied the incriminating circumstances. Though opportunity was granted by the trial court, the accused did not adduce any evidence in defence.

3. On an appreciation of the evidence adduced by the complainant, the learned Magistrate found the accused guilty under Section 138 of the Negotiable Instruments Act. On conviction thereunder, he was sentenced to undergo simple imprisonment till rising of the court, and also to pay a fine of ₹ 1,00,000/-.

4. Aggrieved by the conviction and sentence, the revision petitioner approached the Court of Session, Kasaragod with Crl.A No.112 of 2014. In appeal, the learned Sessions Judge concurred with the findings of the trial court, and accordingly dismissed the appeal. Now the accused has come up in revision, challenging the legality and propriety of the conviction and sentence.

5. On hearing the learned counsel for the revision petitioner, and on a perusal of the materials, including the judgment under challenge, I find that the complainant has

well proved his case. PW1 has given evidence regarding the due execution of the Ext.P1 cheque in question, and also regarding the debt incurred by the accused. Ext.P3 is the copy of the statutory notice sent by the complainant. The revision petitioner has no explanation why he did not send reply to the statutory notice, and he has also no case that he had made payment of the cheque amount as demanded in the notice. Ext.P2 document shows that Ext.P1 cheque was bounced due to insufficiency of funds. The accused has no case that it was bounced on some other ground, or that he had sufficient funds in his account to honour the cheque. The evidence given by the complainant on facts stands not in any manner discredited. The revision petitioner has not adduced any evidence in defence to rebut the presumption available to the complainant under Section 139 of the Negotiable Instruments Act, that the cheque in question was issued in discharge of a legally enforceable debt. I find that the complainant has well proved his case including the compliance of all statutory requirements for a prosecution. Thus, I find that the conviction is only to be confirmed in

revision. I do not find any illegality or irregularity in the findings made by the courts below or in the conviction made by the courts below. As regards the sentence also, no interference is required because the sentence imposed by the courts below is the minimum possible under the law. When there is a direction to pay compensation to the complainant from out of the fine amount, fine sentence also does not require interference. Thus, this revision is liable to be disposed of *in limine* without being admitted to files.

6. The learned counsel for the revision petitioner finally made a request to grant some reasonable time to the revision petitioner to make payment of the fine amount in the trial court. Considering the amount involved and also the other circumstances, I feel that a reasonable period of four months , as requested by the learned counsel, can be granted to the petitioner.

In the result, this revision petition is disposed of as follows, without being admitted to files.

(a) The conviction and sentence against the revision petitioner under Section 138 of the N.I. Act in C.C No.692/2012 of the court below will

stand confirmed.

(b) The revision petitioner is granted time for four months from this date to surrender before the trial court to serve out the sentence and to remit the amount of fine voluntarily, on failure of which, coercive steps shall be taken by the trial court to enforce the sentence and recover the amount of fine, or enforce the default sentence.

**Sd/-
P.UBAID
JUDGE**

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/True copy/

P.S to Judge