IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

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

Crl.Rev.Pet.No. 731 of 2015 ()

AGAINST THE JUDGMENT IN CRA 196/2009 of DISTRICT & SESSIONS COURT - IV, THALASSERY DATED 28-02-2015

AGAINST THE JUDGMENT IN ST 12518/2008 of J.M.F.C.-III(MOBILE),KANNUR DATED 06-04-2009

REVISION PETITIONER/APPELLANT/ACCUSED(S):

M.RAMAKRISHNAN, AGED 50 YEARS,
S/O.KUNJIRAMAN,
AGRICULTURAL ASSISTANT, KRISHIBHAVAN,
POST EDAYANNUR, KANNUR.

BY ADVS.SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH

RESPONDENT/RESPONDENT/COMPLAINANT & STATE:

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1. P.RAMACHANDRAN, S/O.ANANDAN, AGED 46 YEARS,
PONNAYI HOUSE, THALAP, KANNUR.

2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM – 670 031.

R2 BY PUBLIC PROSECUTOR SRI.ABHIJETT LESSLIE

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.731 of 2015

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Dated this the 17th June, 2015

O R D E R

A cheque for ₹60,000/- issued by the revision petitioner in favour of the 1st respondent herein in discharge of a debt incurred by him was bounced due to insufficiency of funds. When the revision petitioner failed to make payment on demand by statutory notice, the 1st respondent brought a complaint against him before the Judicial First Class Magistrate Court-III, Kannur under Section 138 of the Negotiable Instruments Act.

2. The revision petitioner entered appearance in the trial court and pleaded not guilty when the substance of the accusation was read over over and explained by the learned Magistrate. Thus, the case proceeded for trial. The complainant examined himself as PW1 and marked Exts. P1 to P6 documents including the cheque in question. The accused denied the incriminating circumstances when examined under Section 313 Cr.P.C. However, he did not adduce any evidence in defence in spite of opportunities

granted by the trial court.

3. On an appreciation of the evidence, the learned Magistrate found the revision petitioner guilty under Section 138 of the Negotiable Instruments Act. On conviction thereunder, he was sentenced to undergo simple imprisonment for one month and he was also directed to pay a compensation of ₹ 60,000/- to the complainant under Section 357 (3) of Cr.P.C by judgment dated 6.4.2009 in STC No.12518 of 2008.

4. Aggrieved by the conviction and sentence, the accused approached the Court of Session, Thalassery with Crl.A No.196 of 2009. In appeal, the learned Additional Sessions Judge-IV confirmed the conviction, but modified the sentence. Accordingly, the jail sentence was modified and reduced to imprisonment till rising of the court, and the direction to pay compensation was maintained by judgment dated 28.2.2015 in Crl.A No.196 of 2009. Now the accused has come up before this Court in revision, challenging the legality and propriety of the conviction and sentence.

5. On hearing the learned counsel and on a perusal

of the materials, including the judgment under challenge, I find that the revision petitioner was in fact rightly found guilty by the courts below. The complainant examined as PW1 has given definite and consistent evidence regarding the transaction in which the accused incurred the alleged debt of ₹ 60,000/- and also regarding the execution of Ext.P1 cheque in question. This evidence stands not challenged. Exts.P2 and P3 documents will show that Ext.P1 cheque was bounced due to insufficiency of funds. The accused has no case otherwise that he had sufficient funds in his account, or that the cheque was bounced on some other ground. The accused has no explanation why he did not send reply to Ext.P4 statutory notice, and he has also no case that he had made payment as demanded in the statutory notice. The presumption available to the complainant under Section 139 of the Negotiable Instruments stands not in any manner rebutted by the accused. I find that the complainant has well proved his case of due execution of a cheque issued in discharge of a legally enforceable liability, the bouncing of the cheque due to insufficiency of funds, and also non-

payment of the amount on demand. I find that the complainant has also proved the compliance of all statutory requirements for a prosecution under Section 138 of the Negotiable Instruments Act. I find no illegality or irregularity or impropriety in the conviction made by the courts below. As regards the sentence also, I find no scope for interference because the sentence modified in appeal is only the minimum possible under the law, and the courts made a direction to make payment of compensation with the object of doing substantial justice to the complainant who has not so far proceeded in civil action for realisation of the amount due from the revision petitioner.

6. The learned counsel for the revision petitioner made a request to grant a reasonable time to the accused to make payment of the compensation in the trial court. The request is for four months. In the particular facts and circumstances, I feel that the request is quite genuine and time can be granted as requested by the learned counsel.

In the result, this appeal 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 Crl.A No.196 of 2009 of the court below will stand confirmed.

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

Sd/-
P.UBAID
JUDGE

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/True copy/

P.S to Judge