

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

Crl.Rev.Pet.No. 882 of 2015 ()

AGAINST THE JUDGMENT IN CRA 115/2014 of ADDL.D.C. & SESSIONS COURT -
VII, THIRUVANANTHAPURAM DATED 19-11-2014

AGAINST THE JUDGMENT IN ST 96/2011 of J.M.F.C.-IV, NEYYATTINKARA DATED
07-03-2014

PETITIONER(S)/APPELLANT/ACCUSED:

D. LILLIBAI, AGED 49 YEARS
MELEKARIKOTTUKUZHI VEEDU
CHEMBOOR DESOM, KEEZHAROOR VILLAGE
OTTASEKHARAMANGALAM
THIRUVANANTHAPURAM

BY ADV. SRI.R.GOPAN

RESPONDENT(S):RESPONDENTS/COMPLAINANT & STATE

1.LAILA PETER A.R., AGED 45 YEARS
VALIYAVAZHI NERUVALIKONAM HOUSE
MANACHAMCODU KEEZHAROOR VILLAGE-695001

2.STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM-682031

R2 BY PUBLIC PROSECUTOR SMT.MAYA.P.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
22-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

=====

Crl.R.P. No.882 OF 2015

=====

Dated this the 22nd day of July, 2015

ORDER

This revision petition is directed against the judgment in Crl.A.No.115 of 2014 of the Court of Additional Sessions Judge-VII, Thiruvananthapuram confirming the conviction and sentence imposed on the petitioner in S.T.No.96 of 2011 by the Court of Judicial First Class Magistrate-IV, Neyyattinkara. The revision petitioner was tried for the offence punishable under Section 138 of the Negotiable Instruments Act before the trial court. The allegation of the first respondent/complainant is that the revision petitioner borrowed an amount of Rs.1,50,000/- and in discharge of the said legally enforceable debt, she issued Ext.P1 cheque. But, on presentation for encashment, the said cheque was dishonoured due to insufficiency of funds in the account of the revision petitioner. Thereupon, the

complainant issued a notice intimating the revision petitioner of the dishonour of the cheque and calling upon her to pay the amount due. 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.96 of 2011. On due process, the revision petitioner appeared before the court and the particulars of the charge were read over and explained to her and she pleaded not guilty. The complainant got herself examined as PW1 and got marked Exts.P1 to P6. On the closure of the evidence of the complainant, the revision petitioner was examined under Section 313, Cr.P.C. and she denied all the incriminating circumstances put to her. No defence evidence was adduced by the revision petitioner. On a careful evaluation of the evidence, 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, she was convicted thereunder and sentenced to undergo

imprisonment till the rising of court and to pay a compensation of Rs.1,70,000/- under section 357(3) Cr.P.C and in default of payment of compensation, she was ordered to undergo simple imprisonment for two months. The petitioner took up the matter in appeal as Crl.A.No.115 of 2014 before the Court of Additional Sessions Judge-VII, Thiruvananthapuram. Various contentions were raised against the judgment of the trial court. However, the learned Sessions Judge found no ground to invoke the appellate jurisdiction to overturn the conviction. It was found that the conclusions and findings of the trial court are perfectly in tune with the evidence on record. In the said circumstances, the appellate court confirmed the conviction and sentence. The captioned revision petition has been filed against the said judgment.

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 by the courts below. In such circumstances, to interfere with the conviction in exercise of the revisional jurisdiction the revision petitioner has to establish that there is utter, perverse appreciation of evidence by the courts below or that the conclusions arrived at are 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 do not find any reason to interfere with the conviction concurrently entered against the revision petitioner. No error in law was also 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 it is accordingly, confirmed.

4. With respect to the sentence imposed on the revision petitioner, the trial court sentenced her to undergo imprisonment till

the rising of the court and to pay a compensation of Rs.1,70,000/-. In default of payment of compensation, the revision petitioner was directed to undergo simple imprisonment for a period of two months. Ext.P1 cheque is dated 23.01.2010 and the cheque amount is Rs.1,50,000/-. In such circumstances, I do not find any reason whatsoever to interfere with the sentence imposed by the courts below and hence, it is liable to be 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 compensation. Having heard the learned counsel for the 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 six months to enable the revision petitioner to pay the amount of compensation and to appear to undergo the imprisonment till the rising of the court within the above stipulated time. Ordered accordingly. In case of failure on the part of the

revision petitioner to pay the amount of compensation and to appear to suffer imprisonment till the rising of the court within the above stipulated time, appropriate steps shall be taken by the trial court, in accordance with law to execute the sentence, forthwith.

Subject to the above, this revision petition is dismissed.

Sd/-

**C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

