

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

Crl.Rev.Pet.No. 1040 of 2015 ()

AGAINST THE JUDGMENT IN CRA 436/2007 of COURT OF ADDL.SESIONS
JUDGE-II, MAVELIKKARA DATED 18-12-2008

AGAINST THE JUDGMENT IN CC 140/2007 of J.M.F.C., KAYAMKULAM

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SUSAN THOMAS, AGED 44 YEARS
PROPRIETOR, JEEVAN COLOUR WORLD
PRIVATE BUS STAND
KAYAMKULAM, RESIDING AT, BISHOP COMPOUND
KOLLA P.O., KARUNAGAPPALLY

BY ADV. SRI.A.SHAFAEEK (KAYAMKULAM)

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

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1. ANIMON ALEXANDER, S/O.ALEXANDER
PALATHINKEEZHIL, CHIRAKADAVOM MURI
KAYAMKULAM VILLAGE.
 2. STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.K.SHAJ
R1 BY ADV. SRI.RENJIT GEORGE
R2 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
21-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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Crl.R.P. No.1040 of 2015

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Dated this the 21st day of August, 2015

ORDER

This revision petition is directed against the judgment passed by the Court of Additional Sessions Judge-II, Mavelikkara in Crl.Appeal No.436 of 2007 confirming the order of conviction passed by the Court of Judicial First Class Magistrate, Kayamkulam in C.C.No.140 of 2007. The allegation of borrowal of an amount of ₹1,00,000/- and the bouncing of the cheque issued in discharge of the said legally enforceable debt and the consequential failure to pay the amount due despite the receipt of statutory notice within the statutorily prescribed period led to the prosecution of the revision petitioner under section 138 of the Negotiable Instruments Act. For the conviction thereunder the revision petitioner was sentenced to undergo simple imprisonment for a period of one month and to pay a compensation of ₹1,00,000/-

to the complainant under section 357(3) Cr.P.C. In default of payment of compensation he was ordered to undergo simple imprisonment for a further period of four months.

2. I have heard the learned counsel for the revision petitioner and the learned counsel for the first respondent and the learned Public Prosecutor. Evidently, the conviction under section 138 N.I Act was concurrently entered against the revision petitioner by the courts below. After appreciating the evidence of the first respondent herein as PW1 and Exts.P1 to P8 documentary evidence, the trial court found that the complainant has succeeded in establishing the guilt of the revision petitioner/accused for the offence punishable under section 138, N.I Act. After appreciating the contentions raised in the appeal and perusing the records, the learned Sessions Judge found no ground to invoke the appellate jurisdiction to interfere with the order of conviction passed by the trial court. In a case where the conviction

was concurrently entered against the accused for prosecution under section 138, N.I Act, in order to make this Court to invoke revisional power to interfere with the same, the petitioner has to make out a case of utter, perverse appreciation of the evidence by the courts below or that the findings of the courts below are based on no evidence. However, in this case no such grounds were brought out by the revision petitioner to persuade this Court to invoke the revisional jurisdiction. When that be so, I find no reason to interfere with the conviction concurrently entered against the revision petitioner by the courts below. Accordingly, the conviction of the revision petitioner under section 138, N.I Act is confirmed. Now, what survives for consideration is whether the sentence imposed on the revision petitioner for the conviction under section 138, N.I Act invites interference. Evidently, the trial court upon conviction therefor sentenced the revision petitioner to undergo simple imprisonment for one month under section 138, N.I Act and to pay a compensation of

₹1,00,000/- to the complainant under section 357(3) Cr.P.C. In default of payment of compensation, the revision petitioner was directed to undergo simple imprisonment for a further period of four months. As noticed hereinbefore, the appellate court found no reason to interfere with the sentence as well and accordingly, confirmed the same. While considering the sustainability of the sentence imposed on the revision petitioner for the conviction under section 138 N.I Act, the decision of the Hon'ble Apex Court in **Damodar S.Prabhu v. Sayed Babalal [2010 (2) KLT 587 SC]** assumes relevance. It was held therein that essentially the proceedings under section 138, N.I Act is civil in nature and it was given the colour of criminal proceedings by incorporating section 138 in the N.I Act. The sum and substance of the decision is that in the matter of dishonour of a cheque, the pecuniary aspect has to be given priority over the punitive aspect. The learned counsel for the revision petitioner submitted that the revision petitioner is suffering from the

dreaded disease of cancer. Considering all these aspects, I am of the view that the sentence imposed on the revision petitioner to undergo simple imprisonment for a period of one month can be interfered with and modified. In the result, while confirming conviction of the revision petitioner for the offence under section 138, N.I Act, the sentence to undergo simple imprisonment for one month imposed by the trial court which was confirmed by the appellate court is set aside and substituted by the sentence to undergo imprisonment till the rising of court. However, the direction to pay compensation of ₹1,00,000/- to the complainant/first respondent under section 357 (3) Cr.P.C and in default, to undergo simple imprisonment for a further period of four months are maintained. The learned Magistrate is directed to keep in abeyance the execution of the sentence and also initiation of all steps to recover the amount of compensation for a period of six months so as to enable the revision petitioner to pay the amount of compensation and to appear before the trial court to suffer

the sentence of imprisonment till the rising of court, within the stipulated period of six months. In case of failure on the part of the revision petitioner to do so within the stipulated time, the trial court shall take appropriate steps in accordance with law.

The revision petition is allowed in part as above.

**Sd/-
C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

