

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

Crl.Rev.Pet.No. 1585 of 2013 ()

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AGAINST THE JUDGMENT IN CRL.A. NO.429/2011 OF SESSIONS COURT,
ALAPPUZHA DATED 28-02-2013.**

**AGAINST THE JUDGMENT IN CC. NO.68/2008 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT, AMBALAPUZHA DATED 17-08-2011.**

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REVISION PETITIONER/APPELLANT/ACCUSED:

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SUDARSANA SURESH, W/O.SURESH BABU,
AGED 33 YEARS, CHARUVU KALAYIL,
KOLABHAGAM, THADIYOOR P.O,
THIRUVALLA, PATHANAMTHITTA -689 545.**

BY ADV. SRI.K.RAMANATHAN.

RESPONDENTS/RESPONDENTS/STATE & COMPLAINANT:

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- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.**
 - 2. C.R. SANTHOSHKUMAR, AGED 40 YEARS,
SANTHOSH BHAVAN, KUNNUMMA P.O,
THAKAZHI, ALAPPUZHA DISTRICT- 688 562.**

R1 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 06-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

rs.

C.T.RAVIKUMAR, J

Crl.R.P. No. 1585 of 2013

Dated this the 6th day of April, 2015

ORDER

This revision petition is directed against the conviction concurrently entered against the revision petitioner for the offence under section 138 of the Negotiable Instruments Act. In C.C.No.68/2008 the Court of the Judicial First Class Magistrate, Ambalappuzha found the petitioner guilty under section 138 of the N.I.Act and sentenced her to undergo simple imprisonment for three months. She was also directed to pay an amount of ₹ 2,00,000/- to the complainant as compensation under section 357 (3) of the Code of Criminal Procedure and in default of payment of compensation to undergo simple imprisonment for a period of three months. The petitioner unsuccessfully taken up the matter in appeal as Crl.A.No.429/2011 and the Court of the Sessions Judge, Alappuzha dismissed the appeal confirming the conviction as also the sentence were confirmed by the appellate court. This revision petition is filed in the said circumstances.

2. I have heard the learned counsel for the revision petitioner and also the learned Public prosecutor.

3. When this matter is taken up for consideration the learned counsel appearing for the petitioner submitted that the petitioner may be granted some reasonable time for effecting payment of compensation. As noticed hereinbefore, conviction was concurrently entered against the revision petitioner and the sentence imposed against him by the trial court was also confirmed by the appellate court. In such circumstances, to make this Court to invoke the revisional jurisdiction to interfere with the judgment of the appellate court confirming the judgment passed by the trial court the revision petitioner has to make out a case of utter perverse appreciation of the evidence by the courts below or that is infected with an illegality or an error in law. In this case, obviously, no ground whatsoever has been brought out by the revision petitioner to make this Court to interfere with the impugned judgment invoking the revisional jurisdiction. In the said circumstances, the conviction concurrently entered against the petitioner for the offence under section 138 of the N.I.Act is only to be confirmed accordingly, it is confirmed.

4. For the conviction under section 138 of the N.I.Act the trial court sentenced the petitioner to undergo simple imprisonment for three months besides directing her to pay a

compensation of ₹2,00,000/- with a default clause. The appellate court confirmed the sentence, as well. The learned counsel for the revision petitioner submitted that since the petitioner is seeking only some reasonable time to effect the payment, the substantive sentence may be interfered with and modified. In the context of the said contention it is relevant to refer to 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. In the said decision the Hon'ble Apex Court held that the offences under section 138 of the act are basically of civil nature. It was also held that the intention of the legislature in enacting the provision under section 138 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 in view of the submissions made by the learned counsel for the petitioner I am inclined to interfere with the substantive sentence imposed by the courts below. In the result, while confirming the conviction entered against the petitioner under section 138 of the N.I.Act the substantive sentence imposed by the trial court on the petitioner to undergo simple imprisonment for three months which was confirmed by

the appellate court is set aside and the petitioner is sentenced to undergo imprisonment till the rising of the court. However, the direction to pay compensation of ₹2,00,000/- to the complainant under section 357(3), Cr.P.C and also default clause are maintained. In the said circumstances the learned Magistrate is directed to keep in abeyance the execution of the sentence and also the initiation of steps for recovering the compensation for a period of eight months to enable the petitioner to deposit the amount of compensation before the trial court and to appear before the trial court to undergo the sentence of imprisonment till the rising of the court, within the above stipulated time. It is made clear that in case of failure on the part of the petitioner to deposit the said amount and to appear before the trial court to suffer the sentence of imprisonment till the rising of the court, within the above stipulated time the learned Magistrate shall take appropriate steps, in accordance with law, forthwith.

In short, the revision petition is allowed in part and disposed of with aforesaid directions.

Sd/-

C.T.RAVIKUMAR,JUDGE

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