

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

Crl.Rev.Pet.No. 1307 of 2014 ()

AGAINST THE JUDGMENT IN CRA 100/2012 OF THE COURT OF ADDL.SESSIOINS
JUDGE-III/ENQUIRY COMMISSIONER & SPECIAL JUDGE (VIGILANCE), KOTTAYAM
DATED 09-06-2014

CC 796/2009 of J.M.F.C.,ERATTUPETTA DATED 13-03-2012

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

JOSHY JOSEPH, AGED 40 YEARS
THANNICKAL HOUSE, ARUVITHURA P.O, MEENACHIL TALUK

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.NANDAGOPAL S.KURUP

RESPONDENT(S)/COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA- 682 031.

2. DEEPAK.A.E, AGED 40 YEARS
S/O.EANS, ANAKKALLUMKAL HOUSE, KURUMANNU P.O
KADANADU VILLAGE, MEENACHIL THALUK- 685 001.

R2 BY ADV. SRI.P.T.JOSE
R1 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 29-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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Crl.R.P. No.1307 OF 2014

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Dated this the 29th day of January, 2015

ORDER

This revision petition is directed against the judgment in Crl.Appeal No.100 of 2012 of the Court of Additional Sessions Judge-III/Enquiry Commissioner and Special Judge (Vigilance), Kottayam. As per the impugned judgment, the revision petitioner, who was the accused in C.C.No.796 of 2009 of the Judicial First Class Magistrate Court, Erattupetta was found guilty and sentenced under section 138 of the Negotiable Instruments Act to undergo simple imprisonment till the rising of court. He was also directed to pay a compensation of ₹85850 to the complainant under section 356 (3) [sic.357(3)] of the Code of Criminal Procedure and in default to pay the amount of compensation to undergo simple imprisonment for four months. In the appeal filed by the revision petitioner herein as Crl.A.No.100 of

2012, the appellate court confirmed the conviction and sentence. It is in the said circumstances that this revision petition has been filed.

2. Evidently, after a careful consideration of the evidence on record, both oral and documentary, the courts below found that the cheque in question was issued by the petitioner herein in discharge of a legally enforceable debt owing to the second respondent/complainant. The courts below also found that all the ingredients to attract the offence under section 138 of the N.I. Act were proved against the revision petitioner. It is the result of such consideration that ultimately culminated in the conviction of the petitioner. Upon such conviction, the trial court sentenced the petitioner to undergo imprisonment till the rising of court and to pay a compensation of ₹85850 under section 356 (3) [sic.357(3)] Cr.P.C. The appellate court found no ground to interfere with the conviction and in such circumstances, found no reason to interfere with the quantum of sentence imposed against the petitioner for the offence under section 138 NI Act and accordingly, confirmed conviction as

also the sentence imposed. After considering the rival submissions, I have no hesitation to hold that the revision petitioner has failed to make out a case of perverse appreciation of evidence or brought out any other grounds for exercising revisional jurisdiction. In the said circumstances, the conviction of the revision petitioner under section 138 of the N.I.Act concurrently entered into by the courts below calls for no interference and accordingly, the same is hereby confirmed. Upon such conviction, the petitioner was sentenced to undergo imprisonment till the rising of court besides directing him to pay an amount of ₹85850 as compensation. The amount directed to be paid as compensation is the amount covered by Ext.P1 cheque. In such circumstances, I do not find any reason to interfere with the sentence as well. When this court was about to dismiss this matter without any qualification the learned counsel appearing for the petitioner submitted that some reasonable time may be granted to the petitioner for effecting payment of compensation. It is submitted that the petitioner has already deposited an amount of ₹40,000 towards fine. Thus, if the submission is true to facts, then the balance amount

payable is only ₹45850. In such circumstances, the learned Magistrate is directed to keep in abeyance all further proceedings for realising the amount due after adjusting the amount deposited, if any, for a period of three months to enable the petitioner to deposit the said amount. In case of failure on the part of the petitioner to pay the amount within the above stipulated time, the learned Magistrate shall take appropriate steps in accordance with law. In the meanwhile, the petitioner shall appear before the trial court on 25.2.2015 to suffer the sentence of imprisonment till the rising of court. Subject to the above, this revision petition is dismissed.

Sd/-
C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

