

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

Crl.Rev.Pet.No. 1704 of 2014 ()

**AGAINST THE JUDGMENT IN CRA 183/2012 of ADDITIONAL SESSIONS JUDGE - I,
PALAKKAD DATED 30-07-2014**

**AGAINST THE JUDGMENT IN CC 659/2010 of JUDICIAL FIRST CLASS MAGISTRATE - II,
PALAKKAD DATED 30-03-2012**

REVISION PETITIONER(S)/APPELLANT/ACCUSED:-:

**SAJEEVAN M.C.,
S/O.ACHUTHAN, SASTHA COLONY, MANTHAKKAD
PALAKKAD DISTRICT.**

BY ADV. SRI.RAJESH SIVARAMANKUTTY

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:-:

**1. SREE GOKULAM CHIT & FINANCE CO.(P) LTD.,
OPP. KSRTC BUS STAND, SHORNUR ROAD, PALAKKAD
REPRESENTED BY ITS LEGAL CLERK, K.K.SUBHASHKUMAR
S/O.KRISHNAN, PULINELLI, KOTTAYI
PALAKKAD DISTRICT - 678 001.**

**2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

**R1 BY ADV. SRI.MAHESH V RAMAKRISHNAN
R2 BY ADV.N.SURESH, PUBLIC PROSECUTOR**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23-03-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

JV

C.T. RAVIKUMAR, J.

Crl.R.P.No.1704 of 2014

Dated this the 23rd day of March, 2015

ORDER

This revision petition is filed against the conviction concurrently entered against the petitioner under Section 138 of the Negotiable Instruments Act.

2. The Court of the Judicial First Class Magistrate, in CC No.659/2010 convicted the revision petitioner thereunder and sentenced him to undergo simple imprisonment for a period of six months and ordered him to pay compensation of Rs.78,519/- under Section 357(3) Cr.P.C. and in default to undergo simple imprisonment for a further period of three months. The revision petitioner filed Criminal Appeal No.183/2012 against the said order and the same was dismissed confirming the conviction as also the sentence. This revision petition is filed in the said circumstances.

3. I have heard the learned counsel on both sides.

4. Evidently, the revision petitioner was convicted concurrently by the courts below, under Section 138 of the N.I.Act. In such circumstances, an interference is permissible only on limited grounds. The revision petitioner has failed to

establish a case of utter perverse appreciation of evidence or so also, that he has failed to show that the findings and conclusions of the courts below are totally against the weight of evidence. No error in law was also brought out by the revision petitioner. In such circumstances, the judgment of the appellate court confirming the judgment of the trial court convicting the revision petitioner under Section 138 of the N.I. Act is liable to be confirmed. Accordingly, it is confirmed.

5. Now, the question is whether the sentence imposed on the revision petitioner calls for any interference. In the matter of consideration of the sentence for the conviction under Section 138, N.I. Act, it is relevant to refer to the decisions of the Hon'ble Apex Court reported in **Damodar S. Prabhu v. Sayed Babalal H. [AIR 2010 SC 1907]** and **Kaushalya Devi Massand v. Roopkishore [AIR 2011 SC 2566]**. In those decisions, the Hon'ble Apex Court held that the offences under Section 138 of the Negotiable Instruments Act are basically of civil nature, but criminal colour has been given by incorporating the same in the Negotiable Instruments Act. Further, it was held by the Hon'ble Apex Court that the intention of the legislature in enacting the said provision is to make the drawer of the cheque to pay the amount involved, by giving an opportunity and not to

sent him to jail. In short, in case of dishonour of cheque the pecuniary aspects has to be given priority over the punitive aspect. In the said circumstance, I am of the view that sentence imposed by the revision petitioner in this case invites interference in exercise of the revisional jurisdiction. Accordingly, the sentence imposed on the revision petitioner to undergo simple imprisonment for a period of six months is set aside and the revision petitioner is sentenced to undergo imprisonment till the rising of the Court. The direction to pay the compensation under Section 357(3) Cr.P.C. and the default clause are maintained. The revision petitioner shall pay the amount of compensation within a period of five months and till such time the learned Magistrate shall keep in abeyance the execution. Needless to say that if the revision petitioner fails to pay the amount of compensation and to appear before the trial court to suffer the sentence, within the above stipulated time the trial court shall take appropriate steps in accordance with law, expeditiously.

This revision petition is allowed in part.

sd/-
C.T. RAVIKUMAR,
JUDGE