

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

Crl.Rev.Pet.No. 1831 of 2014 ()

AGAINST THE JUDGMENT IN CRA 170/2011 of THE COURT OF ADDITIONAL
SESSIONS JUDGE-II, TRIVANDRUM DATED 28-08-2014

AGAINST THE JUDGMENT IN ST 575/2006 of J.M.F.C.-VII, TRIVANDRUM DATED
18-03-2011

REVISION PETITIONER/APPELLANT/ACCUSED:

K.T.SUBRAMANIYAN,
THANATHU PARAMBIL HOUSE, ASHARAMAM ROAD, AVALKUNNU.P.O
ALAPPUZHA-688006.

BY ADVS.SRI.S.KANNAN
SMT.K.S.SANGEETHA
SMT.S.SIMY

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

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1. SASIDHARAN,
T.C.50/1485/1, THIRUVONAM HOUSE, THALIYAL
THIRUVANANTHAPURAM - 695 612.
 2. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

R1 BY ADV. SRI.AYYAPPAN SANKAR
R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 13-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.Rev.Pet.No. 1831 of 2014 ()

APPENDIX

REVISION PETITIONER'S EXHIBITS:

ANNEXURE A1- A TRUE COPY OF THE CHEQUE ISSUED TO THE REVISION
PETITIONER DATED 12.12.2014.

// TRUE COPY //

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P.S. TO JUDGE

C.T.RAVIKUMAR, J.

Crl.R.P.No.1831 of 2014

Dated 13th January, 2015

ORDER

This revision petition is directed against the judgment in Crl.A.No.170 of 2011 of the Court of Additional Sessions Judge-II, Thiruvananthapuram confirming the conviction and modifying the sentence imposed on the petitioner in S.T.No.575 of 2006 of the Court of Judicial First Class Magistrate-VII, Thiruvananthapuram. The petitioner was tried for the offence punishable under Section 138 of the Negotiable Instruments Act. The allegation of the first respondent/complainant is that the petitioner borrowed different amounts in different occasions, to be precise ₹ 25,000/-, ₹ 25,000/-, ₹ 20,000/-, ₹ 30,000/- and ₹ 20,000/- respectively on 1.1.2005, 1.1.2005, 7.1.2005, 15.1.2005 and 20.1.2005, to the totalness of ₹ 1,20,000/- and in discharge of the said legally enforceable debt he issued Exts.P1 to P5 cheques. But, on presentation for encashment the said cheques were dishonoured due to insufficiency of fund in the account of the revision petitioner. Thereupon, the complainant issued a notice intimating the revision petitioner of the dishonour of the cheques but, the same was returned as unclaimed. It is the failure on the part

of the 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.575 of 2006. On due course the petitioner appeared before the court and the particulars of the charge were read over and explained to him and the petitioner pleaded not guilty. The complainant got himself examined as PW1 and got marked Exts.P1 to P15. On the closure of the evidence of the complainant the petitioner herein was examined under Section 313 Cr.P.C. and he denied all the incriminating circumstances put to him. However, no defence evidence was adduced. On a careful evaluation of the evidence the trial court found that the complainant has succeeded in establishing the fact that the petitioner herein has committed the offence under Section 138 of the Negotiable Instruments Act. Consequently, he was convicted thereunder and sentenced to undergo simple imprisonment for a period of 15 days and also directed to pay an amount of ₹ 1,20,000/- as compensation under Section 357(3) Cr.P.C. and in default of payment of compensation to undergo simple imprisonment for one month. The petitioner took up the matter in appeal as Crl.A.No.170 of 2011 before the Court of Additional Sessions Judge-II, Thiruvananthapuram. Various contentions were raised against the judgment of the trial court. The learned Additional Sessions Judge found no ground to invoke the appellate jurisdiction. It was found that the conclusions and findings of

the trial court are perfectly in tune with the evidence adduced. In the said circumstances the appellate court confirmed the conviction but, at the same time, modified the sentence. The substantive sentence was reduced to simple imprisonment till the rising of the court. The petitioner was ordered to pay a fine of ₹ 1,20,000/- and the same was ordered to be paid, on realisation, to the complainant as compensation and in default of payment to undergo imprisonment for a period of two months. The accused was also given two months' time to pay the compensation. The captioned revision petition has been filed against the said judgment confirming the convicting and modifying the sentence as aforesaid.

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

3. As noticed hereinbefore, concurrent conviction was entered against the petitioner and the sentence imposed against the petitioner by the trial court was modified by the appellate court. In such circumstances, a further interference by exercising the revisional jurisdiction is called for only if the petitioner succeeds in establishing that the appreciation of evidence by the trial court as also the appellate court is utterly perverse or that the conclusions are against the weight of the evidence or such other sustainable grounds. Having carefully gone

through the pleadings in this revision petition and also after hearing the learned counsel for the petitioner I have no hesitation to hold that no such grounds were made out by the petitioner to compel this Court to exercise the revisional jurisdiction to interfere with the concurrent finding of conviction entered against him. Virtually, the petitioner took up the contentions unsuccessfully raised before the appellate court. In the said circumstances, the conviction entered against the petitioner under Section 138 of the Negotiable Instruments Act concurrently is liable to be confirmed.

4. Obviously, the trial court sentenced the petitioner to undergo simple imprisonment for a period of 15 days and also to pay a compensation of ₹ 1,20,000/- under Section 357(3) Cr.P.C. and in default of payment of compensation to undergo simple imprisonment for one month. After careful evaluation of the circumstances the appellate court interfered with the sentence and modified it. The substantive sentence to undergo simple imprisonment for 15 days was reduced to simple imprisonment till the rising of the court. Taking note of the fact that the total amount covered by the cheques is ₹ 1,20,000/- the petitioner was directed to pay a fine of ₹ 1,20,000/- only and the same was ordered to be paid to the complainant as compensation and in default to undergo imprisonment for two months. I do not find any reason whatsoever to

interfere with the sentence imposed by the trial court which was modified by the appellate court and hence, it is also liable to be confirmed. When this Court was about to dismiss the revision petition without any qualification the learned counsel for the petitioner submitted that some reasonable time may be granted to the petitioner to effect payment of the amount of fine in view of the straitened circumstances. 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 of payment of fine for a period of three months to enable the petitioner to pay the same within the stipulated time. It is made clear that if the petitioner has already paid any amount towards the fine the same shall be given credit. In case of failure on the part of the petitioner to pay the amount of fine within the above stipulated time appropriate steps shall be taken in accordance with law. In the meanwhile, the petitioner shall appear before the trial court on 10.3.2015 to undergo the imprisonment till the rising of the court.

Subject to the above, this revision petition is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

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