

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

Crl.Rev.Pet.No. 1933 of 2014 ()

AGAINST THE JUDGMENT IN CRA 27/2011 of COURT OF ADDITIONAL SESSIONS
JUDGE,PATHANAMTHITTA DATED 20-12-2012

AGAINST THE JUDGMENT IN ST 1599/2007 of COURT OF JUDICIAL
MAGISTRATE OF FIRST CLASS, THIRUVALLA DATED 28-12-2010

REVISION PETITIONER/APPELLANT/ACCUSED:

JOSE MATHEW
EDAYADIL (H), ETHITHANAM P.O.,
CHANGANASSERY
KOTTAYAM.

BY ADV. SRI.N.P.SETHU

RESPONDENTS/COMPLAINANT & STATE:

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1. PRADEEP SCARIAH
CHURULKUZHIYIL (H), VENNIKKULAM P.O.,
PURAMATTOM-689 347.
 2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682031.

R1 BY ADV. SRI.BIJO THOMAS GEORGE
R1 BY ADV. SRI.N.P.PRAJEESH
R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
11-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.Rev.Pet.No. 1933 of 2014

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A1: COPY OF ACKNOWLEDGMENT DATED 15.2.2007.

ANNEXURE A2: COPY OF STATEMENT GIVEN BY THE 1ST RESPONDENT.

// TRUE COPY //

TKS

P.S. to Judge

C.T.RAVIKUMAR, J.

Crl.R.P.No.1933 of 2014

Dated 11th February, 2015

ORDER

This revision petition is filed against the judgment dated 20.12.2012 in Crl.A.No.27 of 2011 of the Court of Additional Sessions Judge, Pathanamthitta confirming the conviction and modifying the sentence imposed against the revision petitioner in S.T.No.1599 of 2007 by the Court of Judicial First Class Magistrate, Thiruvalla. The revision petitioner was tried for an offence under Section 138 of the Negotiable Instruments Act. The trial court on evaluation of the evidence arrived at the conclusion that the complainant has proved the case beyond the reasonable doubt and accordingly, convicted the revision petitioner thereunder and sentenced him to undergo simple imprisonment for two months and also directed to pay an amount of ₹ 4,00,000/- as compensation to the complainant under Section 357(3) of the Code of Criminal Procedure. In default of payment of compensation the revision petitioner was directed to undergo simple imprisonment for two months. In Crl.A.No.27 of 2011 the appellate court confirmed the conviction but, modified the substantive sentence to imprisonment till the rising of the court and maintained the direction to pay compensation to the tune of

₹ 4,00,000/- under Section 357(3) Cr.P.C. as also default clause incorporated by the trial court. This revision petition is filed in the said circumstances.

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

3. The case of the first respondent/complainant is that the revision petitioner borrowed an amount of ₹ 4,00,000/- and in discharge of the said legally enforceable debt issued Ext.P1 cheque or the same amount. The said cheque on its presentation for encashment was dishonoured on the ground of insufficiency of funds. Thereupon, the complainant issued statutory notice intimating the revision petitioner about the dishonour of the cheque and seeking upon him to pay the amount due. It is the failure to do so by the revision petitioner that constrained the first respondent to file the complaint which ultimately culminated in the registration of S.T.No.1599 of 2007 and the consequential conviction and imposition of sentence. Evidently, to bring home the charge against the revision petitioner the first respondent got himself examined as PW1 and got marked Exts.P1 to P6. Though the revision petitioner denied all incriminating circumstances while being examined under Section 313 Cr.P.C. on closure of the evidence of the complainant he did not adduce any defence evidence. The trial court on

evaluation of the evidence found that the first respondent succeeded in proving the commission of the offence under Section 138 of N.I. Act by the revision petitioner. Though the revision petitioner raised manifold contentions to mount challenge against the said order the appellate court rejected the said contentions and confirmed the conviction and at the same time, taking note of the settled position that in a case of dishonour of cheque the pecuniary aspect has to be given priority over the punitive aspect, modified the sentence. As per the impugned judgment the substantive sentence was modified to imprisonment till the rising of the court and the direction to pay the compensation and to suffer default sentence were maintained. The amount directed to be paid as compensation under Section 357(3) Cr.P.C. is only the amount covered by Ext.P1 cheque dated 14.6.2007. No ground whatsoever was established by the revision petitioner to interfere with the conviction concurrently entered against him. In the circumstances as aforesaid, I do not find any reason to interfere with the conviction concurrently entered against the revision petitioner as also the sentence imposed by the appellate court. When this Court was about to dismiss this revision petition holding the aforesaid view the learned counsel for the revision petitioner submitted that some reasonable time may be given to the revision petitioner to pay the amount of compensation directed to be paid. After hearing the parties on the said aspect I am inclined to issue a

direction to the learned Magistrate to keep in abeyance the execution of the sentence and all further proceedings for recovery of the amount of compensation for a period of eight months. Needless to say that in case of failure on the part of the revision petitioner to effect payment of compensation and to appear before the trial court to suffer the imprisonment, within the above stipulated time, appropriate steps, in accordance with law, shall be taken by the learned Magistrate, forthwith.

Subject to the above, this revision petition is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS