

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

Crl.Rev.Pet.No. 1946 of 2014 ()

AGAINST THE JUDGMENT IN CRA 314/2012 of ENQUIRY COMMISSIONER &
SPECIAL JUDGE, KOTTAYAM DATED 19-05-2014
AGAINST THE JUDGMENT IN ST 1561/2009 of J.M.F.C-I, KOTTAYAM
DATED 22-09-2012

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

E.R.NARAYANAN
KAKKANATTUPARAMBIL HOUSE
KUMARANALLOOR P.O.,KOTTAYAM DISTRICT.

BY ADVS.SRI.RAJESH NAIR
SRI.BIJOY CHANDRAN

RESPONDENTS/COMPLAINANT AND STATE:

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1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
 2. THE KOTTAYAM URBAN WELFARE CO-OPERATIVE SOCIETY
NO.1015, REPRESENTED BY ITS SECRETARY, PIN-686 001.

R1 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMIS/..SION ON 22-01-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.R.P.No.1946 of 2014

Dated 22nd January, 2015

ORDER

The revisionist was the accused in S.T.No.1561 of 2009 on the files of the Court of Judicial First Class Magistrate-I, Kottayam. This revision petition is directed against the judgment in Crl.A.No.314 of 2012 of the Court of Additional Sessions Judge-III, Kottayam, confirming the conviction and modifying the sentence imposed on him for the offence under Section 138 of the Negotiable Instruments Act (for short 'N.I.Act') in S.T.No.1561 of 2009. The case of the 2nd respondent/the complainant Co-operative Society is that the petitioner availed a loan from the Society with loan account No.BL 858/06-07 and for the purpose of discharging the outstanding liability he issued Ext.P3 cheque dated 18.10.2008. The said cheque on its presentation was dishonoured on the ground of insufficiency of fund in the account of the petitioner. Thereupon, statutory notice informing the petitioner regarding the dishonour of the cheque and asking him to pay the amount due was issued. However, the petitioner failed to pay the amount due within the statutorily permissible period. It is in the said circumstances that the complaint was filed by the 2nd respondent which

taken on file as S.T.No.1561 of 2009. To substantiate the charge against the petitioner, on the side of the complainant/the 2nd respondent herein PW1, the Secretary of the Society was examined and Exts.P1 to P8 were marked. After the closure of evidence of the complainant the petitioner was questioned under Section 313 Cr.P.C. and the petitioner denied all the incriminating circumstances put to him. He did not adduce any oral evidence, but, produced documentary evidence viz., Exts.D1 and D2. After evaluating the evidence on record the trial court found that the evidence on record conclusively proved the guilt of the petitioner under Section 138 of the Negotiable Instruments Act and consequently convicted him thereunder. Upon such conviction he was sentenced to undergo simple imprisonment for one month and directed to pay a compensation of ₹ 71,106 under Section 357(3) Cr.P.C. and in default of payment of compensation to undergo simple imprisonment for 60 days. There was also a direction that the amount of compensation, if realised, shall be paid to the complainant. The petitioner took up the matter in appeal as Crl.A.No.314 of 2012. Various contentions raised by the petitioner to mount challenge against the judgment in S.T.No.1561 of 2009 were found meritless by the appellate court and the appellate court found that the trial court has correctly arrived at the findings and

conclusions based on the evidence on record. In the result, the appellate court confirmed the conviction entered against the petitioner. However, 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 the appellate court modified the sentence. While retaining the direction to pay compensation of ₹ 71,106 under Section 357(3) Cr.P.C. the sentence was modified as imprisonment till rising of the court. This revision petition is filed against the said judgment.

2. I have heard the learned counsel for the petitioner.

3. The ground raised to challenge the judgment in the appeal would reveal that the core contention is that Exts.D1 and D2 produced by the petitioner were not properly considered and appreciated by the trial court as also the appellate court. The said documents were produced, virtually, to prove that the petitioner had discharged the liability. As noticed hereinbefore, the specific case of the 2nd respondent is that Ext.P3 cheque was issued by the revision petitioner for discharging the enforceable liability arising from a loan transaction. According to the 2nd respondent, the loan account bears No.

BL858/06-07. The petitioner produced Exts.D1 and D2 pass books and admittedly, they would reveal that they relate to loan account Nos.581/05-06 and BL 612/05-06. In such circumstances, the trial court as also the appellate court found that production of Exts.D1 and D2 was not sufficient to dislodge the presumption available under the provisions of the Negotiable Instruments Act. That apart, evidently, the complainant has produced Ext.P8 which is the copy of the book relating the loan in question to prove the original loan transaction and it was on its perusal that the courts below concurrently held that it would show that the amount covered by the cheque was outstanding. The appellate court also took into consideration the absence of any explanation from the part of the petitioner as to how Ext.P3 cheque reached the complainant bank. In the said circumstances, the fact that the petitioner had a loan transaction with the complainant under loan account No.BL 858/06-07 was proved by the complainant and the conclusions thus arrived at by the courts below cannot be said to be faulty. The presumption under Section 138 of the N.I.Act was very much available to the complainant and that was not dislodged by the petitioner herein as held by the courts below. In the said circumstances, the appreciation of evidence by the trial court as also by the appellate court cannot be said

to be perverse. The findings also cannot be said to be against the weight of the evidence. In short, I do not find any reason to interfere with the concurrent finding of conviction entered against the petitioner by the courts below based on the evidence on record.

4. Evidently, upon such conviction the trial court imposed a substantive sentence of simple imprisonment for one month on the petitioner besides directing the petitioner to pay a compensation of ₹ 71,106/-. As noticed hereinbefore, the appellate court after taking into account the attending circumstances modified the substantive sentence and sentenced him to suffer imprisonment till rising of the court. The amount directed to be paid under Section 357(3) Cr.P.C. was not interfered with and, in fact, it is only the amount outstanding towards the loan. In the said circumstances, I do not find any ground to interfere with the sentence imposed against the petitioner for the offence under Section 138 of N.I.Act. When this court was about to dispose of the matter rather, dismiss the matter the learned counsel for the petitioner submitted that some reasonable time may be granted to the petitioner for depositing the amount of compensation directed to be paid. After hearing the learned counsel I am of the view that four months' time can

be granted to the petitioner for effecting deposit of the amount of compensation of ₹ 71,106. Hence, while confirming the conviction and the sentence the learned Magistrate is directed to keep in abeyance the further proceedings, in the matter for a period of four months to enable the petitioner to pay the amount of compensation. In the meanwhile, the petitioner shall appear before the trial court to suffer the sentence of imprisonment till rising of the court on or before 25.2.2015. Needless to say that in case of failure on the part of the petitioner to effect payment of compensation within the above stipulated time appropriate steps, in accordance with law, shall be taken by the Magistrate. Subject to the above this revision petition is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

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