

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. 1953 of 2014 ()

AGAINST THE JUDGMENT IN CRA 333/2007 of COURT OF SESSIONS JUDGE,
PATHANAMTHITTA DATED 08-07-2009

AGAINST THE JUDGMENT IN ST 721/2006 of COURT OF JUDICIAL FIRST CLASS
MAGISTRATE-II, PATHANAMTHITTA DATED 27-11-2007

REVISION PETITIONER/APPELLANT/ACCUSED:

V.K.PURUSHOTHAMAN NAMBOOTHIRI, AGED 70 YEARS
S/O.KRISHNAN NAMBOOTHIRI, DEEPASREE
GANAPATHIKOVIL ROAD, VAZHUTHAKKADU P.O
THIRUVANANTHAPURAM.

BY ADVS.SRI.K.SHAJ
SRI.SAJJU.S
SRI.RENJIT GEORGE
SRI.RENJITH.R.NAIR
SMT.ANJU MOHAN
SRI.S.K.SUJITH KRISHNA
SRI.S.VISHNU (ARIKKATTIL)

RESPONDENTS/COMPLAINANT & STATE:

1. E.J.SREEKUMAR
S/O.JANARDHANAN NAIR, ASOKA BHAVAN
THAZHAM P.O., MALAYALAPPUZHA REPRESENTED BY HIS POWER
OF ATTORNEY HOLDER K.K.THANKAPPAN NAIR
S/O.KRISHNAN NAIR, KUMBAZHA THOTTATHIL HOUSE
THAZHAM P.O. MALAYALAPPUZHA - 689 645.

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

R1 BY ADV. SRI.G.UNNIKRISHNAN
R1 BY ADV. SRI.V.JOHN SEBASTIAN RALPH
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:

C.T.RAVIKUMAR, J.

Crl.R.P.No.1953 of 2014

Dated 13th January, 2015

ORDER

This revision petition is directed against the judgment in Crl.A.No.333 of 2007 of the Court of Sessions Judge, Pathanamthitta confirming the conviction and modifying the sentence imposed on the revision petitioner in S.T.No.721 of 2006 of the Court of Judicial First Class Magistrate-II, Pathanamthitta. The revision petitioner was tried for the offence punishable under Section 138 of the Negotiable Instruments Act. The allegation of the first respondent/complainant was that the revision petitioner borrowed an amount of ₹ 2,50,000/- and in discharge of the said legally enforceable debt he issued Ext.P1 cheque dated 23.9.2005 for an amount of ₹ 2,50,000/- drawn on the Catholic Syrian Bank, Nalukodi Branch. But, on its presentation for encashment it was dishonoured on the ground "account closed". Thereupon, the complainant issued a notice intimating the factum of dishonour of the cheque and also calling upon the revision petitioner to effect payment of the amount due. It is the failure on the part of the revision 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.721 of 2006. On due course the revision petitioner appeared and the particulars of the charge were read over and explained to him and the revision petitioner pleaded not guilty. He claimed to be tried. To bring home the charge the complainant got himself examined as PW1 and got marked Exts.P1 to P6. On the closure of the evidence of the complainant the revision 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 by him. On a careful evaluation of the evidence the trial court found that the complainant has succeeded in establishing the fact that the revision 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 six months and also to pay a fine of ₹ 2,50,000/- under Section 357(1) Cr.P.C. and in default of payment of fine to undergo simple imprisonment for three months. There was also a direction that the entire amount of fine, on realisation, shall be paid to the complainant as compensation. The revision petitioner took up the matter in appeal as Crl.A.No.333 of 2007. Various contentions were raised against the judgment of the trial court. The learned Sessions Judge found them meritless and declined to invoke the appellate jurisdiction to interfere with the conviction. 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 imprisonment till rising of the court. The sentence to pay fine was also modified and the revision petitioner was directed to pay an amount of ₹ 2,50,000/- as compensation, to the complainant under Section 357(3), Cr.P.C. A default clause was also incorporated. The captioned revision petition has been filed against the said judgment confirming the conviction and modifying the sentence as aforesaid.

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

3. As noticed hereinbefore, conviction was entered against the revision petitioner concurrently and the sentence imposed against the revision 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 revision petitioner succeeded in establishing that the appreciation of evidence by the trial court as also the appellate court is perverse or their conclusions are totally against the weight of the evidence. Having carefully gone through the pleadings in this revision petition and also after hearing the learned

counsel for the revision petitioner I have no hesitation to hold that no such grounds were made out by the revision petitioner to compel this Court to exercise the revisional jurisdiction to interfere with the concurrent finding of conviction entered against him. No error in law was also brought out. In the said circumstances, the conviction entered against the revision petitioner under Section 138 of the Negotiable Instruments Act is confirmed.

4. Obviously, the trial court sentenced the revision petitioner to undergo simple imprisonment for six months and also to pay a fine of ₹ 2,50,000/- under Section 357(1) Cr.P.C. and in default of payment of fine to undergo simple imprisonment for three months. After careful evaluation of the circumstances the appellate court interfered with the sentence and modified it. The substantive sentence to undergo simple imprisonment for six months was reduced to imprisonment till rising of the court. As noticed hereinbefore, the sentence of payment of fine was also interfered. An amount of ₹ 2,50,000/- was directed to be paid as compensation, to the complainant under Section 357(3), Cr.P.C. In default of payment of the compensation he was directed to undergo simple imprisonment for a period of three months. Ext.P1 cheque is dated 23.9.2005 and the cheque amount is ₹ 2,50,000/-. In the circumstances, I do not find any reason whatsoever to interfere with the

sentence imposed by the trial court which was confirmed by the appellate court. Accordingly, it is confirmed. When this Court was about to dismiss this revision petition without any qualification the learned counsel for the revision petitioner submitted that some time may be granted to the revision petitioner to effect payment of the amount of compensation.

5. Having heard the learned counsel for the revision petitioner while dismissing this revision petition and confirming the conviction and the sentence I am inclined to order as follows:-

The revision petitioner is granted a month's time to pay an amount of ₹ 75,000/- towards the amount of compensation payable under Section 357(3) Cr.P.C. In case the revision petitioner pays the said amount within the above stipulated time, the balance amount shall be paid in five equal monthly instalments on or before 15th of every succeeding months. This revision petition is disposed of accordingly.

Sd/-
C.T.RAVIKUMAR
Judge

TKS