

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

Crl.Rev.Pet.No. 2141 of 2014 ()

AGAINST THE JUDGMENT IN CRA 218/2013 of ADDL.DISTRICT COURT,KOTTAYAM
DATED 03-09-2014
ST 204/2011 of J.M.F.C.III, KANJIRAPPALLY

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SHEELA RANI C.R.
ASSISTANT MANAGER, KSFE, PONKUNNAM BRANCH
RESIDING AT MOHANAM, ANICKADU POST, PALICKATHODU.

BY ADV. SRI.VINOD VALLIKAPPAN

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

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1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA.
 2. T.D.CHACKO, AGED 52
S/O.DEVASSIA, THEKKUMKUDIYIL HOUSE, ANICKADU KARA
ANICKADU VILLAGE, ANICKADU POST, PALICKATHODU
KOTTAYAM-686002

BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
07-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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CRL.R.P. No.2141 OF 2014

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Dated this the 7th day of January, 2015

ORDER

This revision petition is directed against the judgment in Crl.Appeal No.204 of 2013 confirming the conviction and modifying the sentence imposed by the Court of the Judicial First Class Magistrate-III, Kanjirappally in S.T.No.204 of 2011. The revision petitioner was tried for offence under section 138 of the Negotiable Instruments Act. The case of the complainant is that on 23.10.2008, the revision petitioner borrowed an amount of ₹1,05,000/- from the complainant and in discharge of the said legally enforceable debt, issued Ext.P1 cheque dated 1.11.2008 for ₹35,000/- and Ext.P2 cheque dated 11.11.2008 for ₹70,000/-. The said cheques on presentation for encashment were dishonoured on the ground of insufficiency of funds in the account of the revision petitioner. The

complainant issued notice to the revision petitioner intimating the factum of dishonour of the cheques and also calling upon him to pay the amount covered by the aforesaid cheques. It is the failure on the part of the revision petitioner to pay the amount covered by the said cheques within the statutory prescribed period that made the second respondent to file the complaint which was later taken on file and registered as S.T.No.204 of 2011.

2. On due process the revision petitioner appeared before the trial court. The particulars of the offence were read over and explained to the petitioner and she pleaded not guilty. To prove the case, the complainant got himself examined as PW1 and besides getting examined one Thomaskutty as PW2 and marked Exts. P1 to P9. After closure of the evidence of the prosecution, the accused was examined under 313 Cr.P.C and she denied all the incriminating circumstances put to her. However, she did not adduce any defence evidence. On evaluation of the evidence on record and after

appreciating the arguments advanced, the trial court found that the complainant has succeeded in proving the guilt of the revision petitioner for the offence punishable under section 138 of the NI Act. Consequently, the revision petitioner was convicted thereunder and sentenced to undergo simple imprisonment for three months and to pay an amount of ₹105000/- with 9% interest from 1.11.2008 till realisation. In default of payment of fine, the revision petitioner was directed to undergo simple imprisonment for a further period of four months.

3. Aggrieved by the conviction and sentence, the revision petitioner filed Crl.Appeal No.218 of 2013. The Court of Additional Sessions Judge-I, Kottayam considered the evidence on record and the contentions raised and allowed the appeal in part as hereunder:-

1. Conviction of the accused by the trial court under section 138 of the Negotiable Instruments Act is confirmed.
2. The sentence of imprisonment for a period of

three months imposed on the accused by the trial court is set aside.

3. The sentence of fine imposed on the accused by the trial court is modified. The accused is sentenced to pay a fine of Rs.1,60,000/- (Rupees one lakh and sixty thousand only) and in default of payment of fine to undergo simple imprisonment for a period of two months.
4. If the fine amount is realized, it shall be given to the complainant as compensation under section 357(1) Cr.P.C.
5. The accused is granted time till 31.12.2014 to deposit the fine amount in the lower court.

4. Evidently, the jail sentence was set aside while confirming the conviction. The sentence was modified and the revision petitioner was sentenced to pay a fine of ₹1,60,000/- and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of two months. The amount of fine, if realised, was directed to be given as compensation to the complainant under section 357(1) Cr.P.C. This appeal is filed in the said circumstances.

5. I have heard the learned counsel for the revision petitioner

and the learned Public Prosecutor.

6. In a case where the conviction was concurrently entered against the accused for a prosecution under section 138 N.I Act in order to make this Court to invoke revisional power to interfere with the same, the revision petitioner has to make out a case of utter perverse appreciation of evidence by the courts below or that the findings of the courts below are based on no evidence. Such interference is also permissible in case an error of law is established. In this case, the contention of the revision petitioner is that the courts below have failed to take into account the fact that the cheques in question were tampered with. It is further contended that the fact that the cheques numbered in sequence issued much later than the cheques in question were presented and honoured in 2008 while the cheques in question were presented only in 2013 was also not taken into due consideration by the courts below. The further case of the revision petitioner was that the amount was advanced to her husband and she has not issued any cheque as alleged in the complaint. In the context

of the contentions it is relevant to note that though the revision petitioner had tried to challenge the cheques by disputing the rewritings made in them under the signature of the accused, it is pertinent to note that she had not disowned the cheques and also the signature appearing in them. In other words, the revision petitioner opted to send the cheque for expert opinion only for the purpose of ascertaining the writings of the dates on them without requiring to ascertain other writings and signature on them. In the decision in **Vasanthakumar T. v. Vijayakumari [2015 (3) KHC SN 4 (SC)]**, the Hon'ble Apex Court held that when the cheque and the signature are admitted the complainant is entitled to get the benefit of presumption available under sections 118 and 139, N.I Act. In this case, taking into account the aforesaid aspects, the courts below held that the cheques as also the signatures thereon were not disputed by the revision petitioner. In other words, the revision petitioner has admitted them. When that be the position, the complainant/second respondent was entitled to get the benefit of presumption available under sections 118 and 139

N.I.Act. True that the said presumptions are rebuttable. However, in this case, the revision petitioner has not adduced any evidence to dislodge the presumption available to the complainant in view of the aforesaid provisions. No circumstances which would enable the Court to infer such rebuttal was also brought out. In short, none of the grounds which invites an interference in exercise of the revision jurisdiction was made out by the revision petitioner. In such circumstances, the conviction of the petitioner for the offence under section 138 N.I Act is liable to be confirmed. Accordingly, it is confirmed. The next question is whether the modified sentence of fine imposed on the petitioner invites interference. The total amount covered by Exts.P1 and P2 cheques is ₹1,05,000/-. The said cheques are dated 1.11.2008 and 11.11.2008. The contention of the petitioner is that the trial court awarded interest at the rate of 9% on the total amount covered by the said cheques and the appellate court virtually maintained the same and the appellate court only calculated the amount payable towards interest at the aforesaid rate and ordered to

give the said amount in addition to the amount covered by Exts.P1 and P2 cheques. In the contextual situation, it is relevant to refer to the decision of the Hon'ble Apex Court in **Damodar S.Prabhu v. Sayed Babalal [2010 (2) KLT 587 SC]**. It was held therein that in the matter of dishonour of the cheque, pecuniary aspect has to be given preference over the punitive aspect. In such circumstances, I do not find any reason to interfere with the modified sentence of fine imposed by the appellate court. It is also to be noted that while enhancing the amount the appellate court also set aside the jail sentence imposed on the petitioner. In short, I do not find any reason to interfere with the modified sentence imposed on the petitioner. When this Court was about to dismiss the revision petition without any qualification the learned counsel for the revision petitioner submitted that some reasonable time may be granted to the revision petitioner to effect payment of the amount of compensation. 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 for a period of eight months to enable the revision petitioner to pay the amount of fine within the above stipulated time. Ordered accordingly. In case of failure on the part of the revision petitioner to pay the amount of fine within the above stipulated time, appropriate steps shall be taken by the trial court, in accordance with law to execute the sentence, forthwith.

Subject to the above, this revision petition is dismissed.

Sd/-
C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

