

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

Crl.Rev.Pet.No. 2198 of 2014 ()

IN Crl.Appeal 384/2011 of ADDL. SESSIONS COURT - V, KOTTAYAM

IN ST 195/2010 of J.M.F.C - II, CHENGANACHERRY

REVISION PETITIONER(S)/APPELLANT/ACCUSED:-:

**VISHNU VIJAYAN
VEDIYOTTU, KOLLAD P.O., KOTTAYAM.**

BY ADV. SRI.ARUN CHANDY

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:-:

**1. BIJU KURIAKOSE
OOMMANCHERYIL HOUSE, KURICHY P.O., KOTTAYAM.**

**2. STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

**R1 BY ADV. SRI.VIJAI MATHEWS
R BY PUBLIC PROSECUTOR SEENA RAMAKRISHNAN**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
19-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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C.T.RAVIKUMAR, J.

CRL.R.P.NO.2198 OF 2014

Dated this the 19th day of March, 2015

ORDER

This revision petition is directed against the conviction concurrently entered against the revision petitioner for the offence under Section 138 of the Negotiable Instruments Act. The petitioner was tried for the said offence in ST No.195/2010 before the Court of Judicial First Class Magistrate – II, Changanassery. On evaluating the evidence consisting of the oral testimony of the complainant as PW 1 and Exhibits P1 to P7, the trial court found that the complainant has succeeded in establishing the commission of offence under Section 138 of the N.I. Act by the revision petitioner conclusively. Consequently, he was convicted thereunder and sentenced to undergo imprisonment till the rising of the Court and to pay a fine of Rs.1,21,000/-. In default of the payment of fine the revision petitioner was ordered to undergo imprisonment for a further period of one month. The amount of fine was directed to be paid to the complainant under Section 357 (I) (b) of the Code of Criminal Procedure. The revision petitioner preferred Crl. Appeal No.384/2011

against the said judgment. The appellate court considered the contentions raised and found them meritless. Consequently, the appellate court confirmed the conviction as also the sentence imposed by the trial court. This revision petition is filed in this said circumstances.

2. Heard the learned counsel for the revision petitioner, the learned counsel appearing for the first respondent and also the learned Public Prosecutor.

3. Obviously, concurrent finding of conviction was entered against the revision petitioner. In such circumstances, to make this court to invoke the revisional jurisdiction, the revision petitioner is either to show that the appreciation of evidence by the courts below was utterly perverse or that the conclusions arrived at by the courts below are based on no evidence. No error of law was also made out to invite an interference. In this case the revision petitioner has failed to make out any such ground. In such circumstances I do not find any reason to interfere with the conviction concurrently entered against the revision petitioner by the courts below. Accordingly, conviction of the revision petitioner for the offence punishable under Section 138 of the N.I. Act is confirmed.

4. With respect to the question whether the sentence imposed for the conviction under Section 138 of the N.I. Act invited interference, it is to be noted that for the conviction thereunder the courts below imposed only imprisonment till the rising of the court and to pay a fine of Rs.1,21,000/-. True that default sentence was also incorporated. Once it is found that conviction was rightly entered against revision petitioner and that he was sentenced only to undergo imprisonment till rising of the court and to pay an amount of fine of Rs.1,21,000/- which is equal to the amount covered by the cheque in question. I do not find any reason to interfere with the sentence as well. When this court was about to dismiss this revision holding such a view the learned counsel for the revision petitioner submitted that some reasonable time may be granted to the revision petitioner to pay the amount of fine. Having heard the learned counsel of both sides on the said issue I think that in the interest of justice the learned Magistrate can be directed to keep in abeyance the execution of the sentence for a period of five months to enable the revision petitioner to pay the amount of fine within the stipulated time and to appear before the trial court to undergo the sentence of imprisonment till the rising of the court. Ordered accordingly. It is made

clear that in case failure on the part of the revision petitioner to pay the amount and to appear before the trial court to undergo the imprisonment till the rising of the court, within the above stipulated time, the trial court shall take appropriate steps to execute the sentence in accordance with law. Subject to the above, this revision petition is dismissed.

C.T.RAVIKUMAR, JUDGE

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