

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

Crl.Rev.Pet.No. 2224 of 2014 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 612/2012 of ADDITIONAL
SESSIONS JUDGE, NEYYATTINKARA DATED 25-06-2014

AGAINST THE JUDGMENT IN ST NO.4707/2010 of JUDICIAL FIRST CLASS
MAGISTRATE COURT-I,TRIVANDRUM DATED 07-12-2012

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SUSEELA.S
KALATHARAKONAM MELE PUTHAN VEEDU,
EDACODE, NEMAM P.O.
THIRUVANANTHAPURAM.

BY ADV. SRI.M.DINESH

RESPONDENTS/COMPLAINANT & STATE:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.

2. VINOD.P.S.,
S/O.SURENDRAN, AMMA HOUSE,
NIRAMANKARA
NEMOM, KARAMANA P.O.,
THIRUVANANTHAPURAM-695002.

R2 BY ADVS. SRI.SUMAN CHAKRAVARTHY
SRI.SANDEEP T.GEORGE
R1 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 17-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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C.T.RAVIKUMAR, J

Crl.R.P. No. 2224 of 2014

Dated this the 17th day of March, 2015

ORDER

This revision petition is directed against the conviction concurrently entered against the petitioner under section 138 of the Negotiable Instruments Act. The petitioner was indicted for an offence under section 138 of the N.I.Act before the court of the Judicial First Class Magistrate-I, Thiruvananthapuram in S.T. No.4707/2010. After complying with all the procedures of trial for an offence under section 138 of the N.I.Act and on appreciation of the evidence adduced by the second respondent/complainant the trial court found the petitioner guilty thereunder. Accordingly, he was convicted under section 138 of the N.I.Act and was sentenced to pay a fine of Rs.1,47,500/- and in default of payment of fine, the petitioner was directed to undergo simple imprisonment for six months. The fine amount, if realised was, ordered be paid to the complainant as compensation under section 357(1) of the Code of Criminal Procedure. The petitioner unsuccessfully challenged the same in Crl.A.No.612/2012. The appellate court confirmed the conviction as also the sentence. This revision petition is filed in the aforesaid circumstances.

2. The case of the second respondent/complainant is that the revision petitioner/accused borrowed an amount of Rs.1,25,000/- and in discharge of the said legally enforceable debt issued Ext.P1 cheque. The cheque on its presentation for encashment was dishonoured owing to the 'insufficiency of funds' in the account maintained by the revision petitioner/accused. The second respondent got himself examined as PW1 and got marked Exts.P1 to P5 to establish that the said cheque on its presentation for encashment was dishonoured and despite the intimation regarding the dishonour and the demand for repayment of the amount due the revision petitioner failed to repay the amount and that the complaint was filed after complying with all the statutory formalities. It is to be noted that the petitioner has not mounted the box and he has not produced any evidence in defence. It was on appreciation of the evidence on record that the trial court as also the appellate court arrived at the conclusion that the oral evidence of PW1 with Exts.P1 to P5 are sufficient to establish the charge of commission of offence under section 138 of the N.I.Act against the revision petitioner. Having carefully considered the judgment and upon hearing the learned counsel for the revision petitioner I do not find any reason to disagree with the findings of the courts below for

entering conviction against the revision petitioner. In other words, no case was brought out by the petitioner to interfere with the conviction concurrently entered against her for the offence under section 138 of the N.I.Act. In the circumstances, the conviction of the petitioner under section 138, N.I.Act is confirmed.

3. Upon convicting the petitioner under section 138 of the N.I.Act the trial court sentenced her to pay a fine of Rs.1,47,500/- and in default of payment of fine, the petitioner was directed to undergo simple imprisonment for six months. The fine amount, if realised, was ordered to be paid to the complainant as compensation under section 357(1) of the Code of Criminal Procedure. The appellate court considered the question whether there was any scope for interfering with the sentence imposed by the trial court and ultimately found that no appellate interference is called for in the facts and circumstances and accordingly, confirmed the same. It is to be noted that no jail sentence has been imposed on the revision petitioner. The conviction was followed by sentence of imposition of fine. Ext.P1 cheque is dated 12.10.2010 and the cheque amount is ₹1,25,000/- The amount of fine imposed on the petitioner is ₹1,47,500/- and the said amount on realisation was ordered to be paid to the complainant as compensation.

Considering such circumstances I find no illegality or infirmity calling interference in exercise of the revisional jurisdiction. In short, I do not find any reason to interfere with the sentence imposed against the petitioner and accordingly, it is also confirmed. The learned counsel for the petitioner in such circumstances submitted that the petitioner may be granted some reasonable time to effect payment of fine. Taking note of the fact that the fine amount is Rs.1,45,000/- I am of the view that even while confirming the conviction as also the sentence it will only be appropriate to direct the learned Magistrate to keep in abeyance the execution of the sentence for a period of 3 months, to enable the petitioner to pay the amount of fine in the meanwhile. Ordered accordingly. Needless to say that in case the petitioner fails to pay the amount of fine within the above stipulated time the learned magistrate shall take appropriate steps, in accordance with law to execute the sentence, forthwith. Subject to the above this revision petition is dismissed.

Sd/-

C.T.RAVIKUMAR,JUDGE.

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