

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

Crl.Rev.Pet.No. 2234 of 2014 ()

AGAINST THE JUDGMENT IN C.C. NO.601/2006 of JUDICIAL FIRST CLASS
MAGISTRATE.-I,THRISSUR DATED 31-03-2008

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 365/2008 of SESSIONS
COURT,THRISSUR DATED 22-02-2011

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

OMANA
W/O.VASU @ KUTTAN, PAROLY BLACKSMITH, CHERPU P.O.
THRISSUR DISTRICT.

BY ADV. SRI.K.M.ANEESH

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

1. THE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, COCHIN - 31.

2. V.V.VISWAMBARAN
S/O.VELAYUDHAN, VALIAPARAMBIL HOUSE, KANIMANGALAMP.O.
THRISSUR DISTRICT - 680 027.

R2 BY ADV. SRI.M.T.SURESHKUMAR
R1 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 14-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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C.T.RAVIKUMAR, J

Crl.R.P. No. 2234 of 2014

Dated this the 14th day of January, 2015

ORDER

This revision petition is filed against the judgment in Crl.A.365/2008 of the Court of Session, Thrissur confirming the conviction and modifying the sentence in C.C.No.601/2006 of the court of the Judicial First Class Magistrate-I, Thrissur imposed against him for the offence under section 138 of the Negotiable Instruments Act. The case of the second respondent/the complainant is that the petitioner borrowed an amount of Rs.70,000/- and in discharge of the said legally enforceable debt he issued Ext.P1 cheque for an amount of Rs.70,000/-. When the said cheque was presented for encashment it was dishonoured on the ground of 'insufficiency of fund'. Thereupon, the second respondent issued statutory notice within the prescribed time limit intimating the petitioner about the dishonour of cheque and calling upon him to pay the amount due. Upon failure of the petitioner to pay the amount within the statutorily prescribed time limit the second respondent filed the complaint which was taken on file and

registered as C.C.No.601/2006. Upon evaluation of the evidence the trial court found the petitioner guilty under section 138 of the N.I.Act and convicted him thereunder. Upon such conviction he was sentenced to undergo simple imprisonment for one month and was directed to pay Rs.70,000/- as compensation under section 357(3) of the Code of Criminal Procedure to the second respondent/complainant. Aggrieved by the said judgment the petitioner filed Crl.A.No.365/2008. Though various contentions were raised by the revisionist to mount challenge against the judgment in C.C.No.601/2006 the appellate court found no merit in such contentions and concurred with the findings and the conclusions of the trial court and consequently, confirmed the conviction. However, considering the attending circumstances, the appellate court modified the sentence to undergo simple imprisonment till rising of the court. The direction to pay compensation under section 357(3) Cr.P.C was retained. In default of payment of compensation the revision petitioner was directed to undergo simple imprisonment for one month. The captioned revision petition has been filed against the said judgment.

2. I have heard the learned counsel for the revision petitioners as also the learned Public Prosecutor.

3. There cannot be any doubt with respect to the scope of exercise the revisional power even in respect of the concurrent conviction under section 138, N.I.Act if the appreciation of evidence by the trial court as also the appellate court led to such conviction is utterly perverse or against the weight of evidence. But, there is little scope for interference by invoking the revisional jurisdiction. When no error of law, or any illegality or impropriety has been brought out by the petitioner besides the failure to make out a case of perverse appreciation of evidence or to point out instance of conclusions arrived against the weight of evidence. In this case, the revision petitioner had failed to bring out any ground whatsoever for the invocation of the revisional jurisdiction. When that be the case I find no reason to interfere with the concurrent finding of guilt against the petitioner under section 138 of the N.I.Act entered by the courts below. In the result the conviction entered against the petitioner under section 138 of the N.I. Act is confirmed. Evidently, the trial court sentenced the petitioner to undergo simple imprisonment for one month for such conviction.

Taking into account the entire circumstances and the settled position that in case of dishonour of cheque the pecuniary aspect of the remedy has to be given priority over the punitive aspect the appellate court modified the sentence and reduced it to imprisonment till rising of the court. In the said circumstances, there is absolutely no scope for further interference by invoking the revisional jurisdiction when once the conviction is found to be legal. As a result the sentence imposed against the petitioner or the conviction under section 138 of the N.I.Act is also confirmed. The learned counsel for the petitioner in the said circumstances submitted that taking into account the straitened circumstances of the petitioner he may be granted some reasonable time time for effecting the payment ordered by way of compensation. As a result, while confirming the conviction and the sentence the learned magistrate is directed to keep in abeyance execution of the sentence for a period of three months. In the meanwhile, the petitioner shall appear before the trial court on or before 18.2.2015 to suffer the sentence of imprisonment till the rising of the court. If the amount of fine is not deposited within the above stipulated time the learned magistrate shall take appropriate steps against the petitioner in

accordance with law. It is made clear that if any amount has already been deposited by the petitioner before the trial court towards the amount of compensation that shall be given credit against the amount payable. Subject to the above this Crl.R.P. is dismissed.

C.T.RAVIKUMAR,JUDGE.

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