

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

Crl.Rev.Pet.No. 2251 of 2014 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO.92/2010 of ADDITIONAL DISTRICT  
AND SESSIONS COURT - IV, PATHANAMTHITTA DATED 25-02-2014

AGAINST THE JUDGMENT IN CC NO.301/2009 of JUDICIAL FIRST CLASS  
MAGISTRATE COURT-II, ADOOR DATED 6.3.2010

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SASIDHARAN, AGED 45 YEARS  
S/O.BALAKRISHNAN, AMBALATHARA VEEDU,  
KADAMPANADU P.O.  
PATHANAMTHITTA.

BY ADVS.SRI.K.SHAJ  
SRI.SAJJU.S

RESPONDENT(S)/COMPLAINANT/STATE:

1. BAIJU G.  
BAIJU NIVAS, MADAMPANAD SOUTH P.O.  
PATHANAMTHITTA - 689 645.
2. STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, PIN - 682 031.

R1 BY ADV. SRI.T.E.HARIDAS (B/O)  
R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION  
ON 16-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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**C.T.RAVIKUMAR, J**

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**Crl.R.P. No.2251 of 2014**  
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Dated this the 16<sup>th</sup> day of January, 2015

**ORDER**

This revision petition is directed against the judgment in Crl.A.No.92/2010 of the Court of Additional Sessions Judge-IV, Pathanamthitta confirming the conviction and modifying the sentence in C.C.No.301/2009 passed by the court of the Judicial First Class Magistrate-II, Adoor. The petitioner was tried for the offence under section 138 of the Negotiable Instruments Act. The first respondent/the complainant filed the complaint which was taken on file and numbered as C.C.No.301/2009 alleging that the revision petitioner borrowed an amount of Rs.75,000/- and issued Ext.P1 cheque in discharge of the said legally enforceable debt. On its presentation for encashment it was dishonoured on the ground of 'insufficiency of fund' and thereupon, he issued statutory notice within the prescribed time limit informing the revision petitioner regarding the factum of dishonour of the cheque and calling upon him to pay the amount due. It is the failure on the part of the petitioner to pay the amount within the statutorily permitted time that constrained the first respondent to file the said complaint. On

due process the petitioner appeared before the court and thereupon the particulars of the charge was read and explained to him. The petitioner pleaded not guilty and claimed to be tried. To substantiate the charge the first respondent got himself examined as PW1 and got marked Exts.P1 to P7. After the closure of the evidence of the complainant the revision petitioner was examined under section 313 Cr.P.C and he denied all the incriminating circumstances put to him. The revision petitioner got himself examined as DW1 and no documentary evidence was adduced. After a careful evaluation of the evidence the trial court found the revision 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 year and to pay a fine of Rs.75,000/-. In default of payment of fine compensation he was directed to undergo simple imprisonment for a further period of one month. Aggrieved by the said judgment the petitioner filed Crl.A.No.92/2010. The appellate court considered the contentions taken up by the petitioner to assail the judgment of the trial court but found no merit in them. However, while confirming the conviction the sentence imposed therefor, was modified by the

appellate court. This revision petition is filed in the said circumstances.

2. I have heard the learned counsel for the revision petitioner, the learned counsel appearing for the first respondent and the learned Public Prosecutor.

3. The facts expatiated above would reveal that conviction was concurrently entered against the revision petitioner. In such circumstances, the scope for revisional interference is limited. Certainly, it calls for interference only if the revisionist makes out a case that the courts below appreciated the evidence in an utterly perverse manner or the conclusions and findings of the courts below are totally against the weight of evidence on record. Such interference is also possible if there is error in law. Having heard the learned counsel petitioner and perusing the grounds raised by the revision petitioner and upon a careful consideration of the judgments of the courts below I have no hesitation to hold that the petitioner has failed to make out a case warranting interference by invoking the revisional jurisdiction. The courts below concurrently found that the first respondent has succeeded in proving the execution of the cheque in question and also that the

cheque in question was issued in discharge of a legally enforceable debt and also regarding the compliance with all statutory procedures by the complainant. Though the petitioner got himself examined as DW1 he failed to shake the evidence adduced by the complainant. It is taking into account all the evidence that the courts below concurrently found the revision petitioner guilty under section 138 of the N.I. Act. In such circumstances, I find no reason to interfere with the conviction entered against the petitioner by the trial court and confirmed by the appellate court. Accordingly, the conviction entered against the petitioner is confirmed.

4. As regards the sentence imposed against the petitioner under section 138 of the N.I. Act obviously, the substantive sentence was modified by the appellate court as imprisonment till the rising of the court. The sentence to pay fine of Rs.75,000/- and to pay it as compensation, on realisation to the complainant and also the default clause were maintained by the appellate court. The amount covered by Ext.P1 cheque is 75,000/-. Section 357(1)(b) reads thus:-

**"357.Order to pay compensation.-** (1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of

which fine forms a part, the Court may, when passing judgment order the whole or any part of the fine recovered to be applied-

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(b) in the payment to any person of compensation for any loss or injury caused by the offence, when the compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;"

It is evident that the trial court while imposing a sentence of fine ordered to give the amount of fine imposed on realisation as compensation to the first respondent, provisions under section 357 (1)(b). Evidently, the amount thus imposed as fine and ordered to be given as compensation on realisation is the amount covered by the cheque. In the circumstances, obtained in this case, the revision petitioner cannot be heard to say that the first respondent had not sustained a loss to the tune of ₹75,000/- on account of the offence committed by him. Hence, I find no merit in the contention of the petitioner that the imposition of fine is excessive. In that view of the matter I find no reason to interfere with the modified sentence imposed by the appellate court for the conviction under section 138 of the N.I.Act. When this court was about to dismiss this revision petition holding such a view the learned counsel for the petitioner submitted that the petitioner may be granted some

reasonable time for effecting payment of the amount of fine. After hearing the learned counsel for the petitioner and the learned counsel for the first respondent on the said issue I am inclined to grant three months time for depositing the amount of fine imposed against him. In the said circumstances, while confirming the conviction and the sentence the learned Magistrate is directed to keep in abeyance the execution of the sentence for a period of three months. In case of failure on the part of the revision petitioner to pay the amount of fine and to appear before the trial court to suffer the sentence of imprisonment till the rising of the court, within the above stipulated time the learned Magistrate shall take appropriate steps to execute the sentence, forthwith. Subject to the above this revision petition is dismissed.

Sd/-

**C.T.RAVIKUMAR,JUDGE.**

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