

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 5TH APRIL 2005 / 15TH CHAITHRAM 1927

Crl.Rev.Pet.No. 664 of 1996()

CRA.232/1995 of V ADDL.SESIONS COURT, ERNAKULAM
CC.568/1994 of JUDL.MAGISTRATE OF FIRST CLASS, PERUMBAVOOR
.....

REVN. PETITIONER:

JOHNY JOSEPH, VALIYATHARA VEEDU,
URUBGIKE P.O.,
PERUMBAVOOR.

BY ADV. SRI.S.KRISHNAKUMAR

RESPONDENTS:

1. P.K.VARKEY, S/O.KURIAKOSE,
PARACKAL VEEDU,
KARIVELIKKARA,
KOMBANADU VILLAGE,
PERUMBAVOOR.

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

R1 BY ADV. SRI.T.K.VENUGOPALAN
SRI.VPK.PANICKER
SRI.V.DEVAN
SRI.DINESH R.SHENOY

R2 PUBLIC PROSECUTOR (SRI.K.THAVAMONY)

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 05/04/2005, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K. HEMA, J.

Crl. R.P. No. 664 of 1996

Dated this the 5th day of April, 2005

ORDER

Petitioner was convicted and sentenced under Section 138 of the Negotiable Instruments Act to undergo simple imprisonment for one year as per judgment dated 11.7.1995 in C.C.No.568 of 1994 by the Judicial First Class Magistrate Court, Perumbavoor. The said conviction and sentence were confirmed as per judgment by the Vth Additional Sessions Court, Ernakulam in Crl. A.No.232 of 1995. Hence, this revision.

2. Learned counsel appearing for petitioner did not argue against the conviction but he has requested for interference in the sentence. It is submitted by both sides that the de facto complainant-first respondent has been adequately compensated and the entire money payable to petitioner on account of the cheque involved in this case had been paid and received by the first respondent. Learned counsel appearing for the petitioner placed reliance upon the decision reported in **Abdul Nazar v. Dileep Kumar (2004(3) KLT 264)** to persuade me to alter the sentence of imprisonment in the circumstances stated above.

3. It was pointed out that the court below have not chosen to invoke the powers under Section 357(3) Cr.P.C. and has not shown any reason why it was not invoked. I do not find any reason why direction under Section 357 (3) has not been issued. This aspect was not adverted to at all in the judgments of the courts below. The sentence passed is to undergo imprisonment for one year. The grievances of first

respondent/complainant have been redressed already and learned counsel appearing for the first respondent would also submit that there is no objection in reducing the sentence, since complainant is satisfied of the amount received from petitioner on account of the liability incurred in favour of the first respondent.

4. On considering the facts and circumstances of this case especially the payment made to the satisfaction of the first respondent, I find, leniency can be shown and the substantive sentence of imprisonment can be reduced and modified.

In the result, the following order is passed:

1. The conviction passed against the petitioner in C.C. No. 568 of 1994 by the Judicial First Class Magistrate, Perumbavoor is confirmed.
2. The sentence imposed against the petitioner is modified. The petitioner is sentenced to undergo imprisonment till the rising of the court. Since the petitioner has reportedly and admittedly compensated the the first respondent/complainant, no order as to compensation under section 357(3) is passed.

This petition is partly allowed.

Sd/-

K. HEMA, JUDGE.

Krs.