

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 28TH NOVEMBER 2008 / 7TH AGRAHAYANA 1930

Crl.Rev.Pet.No. 3699 of 2008()

(CC 1037 OF 2005 OF JFCM, VAIKOM)
CRL.A. 98 OF 2007 OF ADDL SESSIONS COURT, KOTTAYAM)

REVN. PETITIONER(S): APPELLANT/ACCUSED

GEETHA W/O.SEETHA RAMAN POTTI,
KANNANKULANGARA MADATHIL, VAIKOM
THEKKENADA P.O. VAIKOM.

BY ADV. SRI.M.K.CHANDRA MOHANDAS

RESPONDENT(S): RESPONDENTS/STATE & COMPLAINANT

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1. STATE OF KERALA, REP.BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
 2. V.K.OUSEPH, NEDIYEZHATHU HOUSE,
VALLAKOM, PADINJAREKKARA P.O.,
NADUVILE VILLAGE, VAIKOM.

R2 - BY PUBLIC PROSECUTOR SRI C M KAMAPPU

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 28/11/2008, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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CRL.R.P.NO. 3699 OF 2008
.....

DATED THIS THE 28th DAY OF NOVEMBER, 2008

ORDER

Revision petitioner is the accused and second respondent, the complainant in C.C.1037 of 2004 on the file of Judicial First Class Magistrate, Vaikom. Petitioner was convicted and sentenced for the offence under Section 138 of N.I.Act. Petitioner challenged the conviction before Sessions Court, Kottayam in Crl.A.98 of 2007. Learned Additional Sessions Judge, on reappraisal of evidence, confirmed the conviction but modified the sentence to simple imprisonment for one month and a compensation of Rs.60,000/-. The conviction and sentence is challenged in this revision petition.

2. Learned counsel appearing for revision petitioner was heard. Learned counsel submitted that revision petitioner is not challenging the conviction but only seeks four months time to pay the amount. So long as sentence is not varied or modified against the interest of second respondent, it is not necessary to issue notice to second respondent.

3. Learned Magistrate and learned Sessions Judge appreciated the evidence in the proper perspective accepting the evidence of second respondent as PW1. Courts below found that Ext.P1 cheque for Rs.60,000/- was issued by revision petitioner on 1.8.2004 for

repayment of the amount borrowed earlier. The finding is in accordance with the evidence on record. It is also proved that revision petitioner did not pay the amount in spite of notice served on him demanding the amount covered by the dishonoured cheque and the complaint was also lodged within the statutory period. Conviction of petitioner for the offence under Section 138 of N.I.Act is perfectly legal.

4. Then the only question is regarding the sentence. Considering the nature of the offence and all other relevant facts and circumstances of the case, interest of justice will be met, if sentence is modified to imprisonment till rising of court and a fine of Rs.65,000/- and in default, simple imprisonment for two months. On realisation of fine, Rs.60,000/- to be paid to second respondent as compensation under Section 357(1) of Code of Criminal Procedure.

5. Revision petition is allowed in part. Conviction of petitioner for the offence under Section 138 of N.I.Act is confirmed. Sentence is modified. Petitioner is sentenced to imprisonment till rising of court and a fine of Rs.65,000/- and in default, simple imprisonment for two months. On realisation of fine, Rs.60,000/- is to be paid to second respondent as compensation under Section 357(1) of Code of Criminal Procedure. Petitioner is granted four months time from today to pay the fine. Petitioner is directed to appear before learned Magistrate on 31.3.2009.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-