

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 30TH JANUARY 2009 / 10TH MAGHA 1930

Crl.Rev.Pet.No. 352 of 2009()

CRA.59/2007 of ADDL. SESSIONS COURTS (ADHOC), MAVELIKKARA
CC.108/2005 of JUDL.MAGISTRATE OF FIRST CLASS I, HARIPAD
.....

REVN. PETITIONER(S): APPELLANT/ACCUSED:

LEKSHMANAN, AGED 41 YEARS,
S/O.NARAYANAN, POOZHICKATTU VEEDU,
MAHADEVIKADU MURI, KARTHIKAPALLY VILLAGE.

BY ADV. SRI.S.SHANAVAS KHAN

RESPONDENT(S): RESPONDENTS/COMPLAINANT & STATE:

-
1. RATHEESAN, AGED 41, S/O.BALAN PILLAI,
RAJ BHAVANAM, CHINGOLI MURI, CHINGOLI VILLAGE.
 2. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M. NAZAR FOR R2

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 30/01/2009, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

M. SASIDHARAN NAMBIAR, J.

=====
Crl.R.P. NO. 352 OF 2009
=====

Dated this the 30th day of January, 2009

ORDER

Revision petitioner is the accused and first respondent the complainant in C.C.108/2005 on the file of Judicial First Class Magistrate-I, Haripad. Revision petitioner was convicted and sentenced for the offence under section 138 of Negotiable Instruments Act. Revision petitioner challenged the conviction before Additional Sessions Court, Mavelikara in Crl.A.59/2007. Learned Additional Sessions Judge on reappreciation of evidence confirmed the conviction and modified the sentence to simple imprisonment for three months and a compensation of Rs.1,00,000/- and in default simple imprisonment for two months. Revision is filed challenging the conviction.

2. Learned counsel appearing for revision petitioner was heard.

3. Learned counsel submitted that in view of the evidence on record and the concurrent findings of fact revision petitioner is not challenging the conviction but sentence may be modified and time may be granted to the revision petitioner to pay the amount.

4. On going through the judgments of the courts below, I find no reason to interfere with the conviction.

5. The evidence of DW1 who was examined by the revision petitioner himself establish that revision petitioner borrowed Rs.1,00,000/- from first respondent and towards its repayment issued Ext.P1 cheque which was dishonoured for want of sufficient funds. It is also proved that first respondent had complied with all statutory formalities provided under section 138 and 142 of Negotiable Instruments Act. Conviction of revision

petitioner for the offence under section 138 of Negotiable Instruments Act is perfectly legal.

6. Then the only question is regarding the sentence. The sentence modified by the learned Sessions Judge is simple imprisonment for three months and compensation which was the amount covered by the dishonoured cheque with a default sentence. So long as the sentence is not altered or modified against the interest of first respondent, it is not necessary to issue notice to first respondent. As per the modified sentence first respondent is entitled to a compensation of Rs.1,00,000/-.

7. Considering the entire facts and circumstances of the case, interest of justice will be met if the sentence is modified to imprisonment till rising of court with a direction to pay the fine on realisation to first respondent as compensation.

Revision is allowed in part. Conviction of

revision petitioner for the offence under section 138 of Negotiable Instruments Act is confirmed. Sentence is modified. Revision petitioner is sentenced to imprisonment till rising of court and a fine of Rs.1,05,000/- and in default simple imprisonment for two months. On realisation of fine, Rs.1,00,000/- to be paid to first respondent as compensation under section 357(1)(b) of the Code of Criminal Procedure. Revision petitioner is directed to appear before the Judicial First Class Magistrate-I, Haripad on 1.6.2009.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006