

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

FRIDAY, THE 30TH JULY 2010 / 8TH SRAVANA 1932

Crl.Rev.Pet.No. 2296 of 2010()

CRA.199/2009 of SESSIONS COURT MANJERI DIVISION (ADHOC-II)
ST.889/2008 of JUDL. MAGISTRATE OF FIRST CLASS COURT, NILAMBUR

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REVN. PETITIONER(S): APPELLANT/ACCUSED:

VENUGOPALAN.A, S/O.VASU VAIDYAR,
CLERK, MDC BANK, ATHAVANAD HOUSE, POKKOOTTUMPADAM.PO,
(NILAMBUR POLICE STATION LIMIT).

BY ADV. MR.JOSEPH SEBASTIAN PURAYIDAM
SMT.MABLE.C.KURIAN

RESPONDENT(S): STATE AND COMPLAINANT:

1. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.
2. A.P.JOSE, S/O.POULOSE, ACHANDI HOUSE,
RAMANKUTH.P.O, NILAMBUR-R.S, (NILAMBUR POLICE STATION LIMIT).

PUBLIC PROSECUTOR MR.C.M.NAZAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 30/07/2010, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

V.K.MOHANAN, J.

Crl. R.P.No.2296 of 2010

Dated this the 30th day of July, 2010.

O R D E R

The accused in a prosecution for an offence u/s.138 of Negotiable Instruments Act is the revision petitioner, as he is aggrieved by the order of conviction and sentence imposed against him by the courts below.

2. The case of the complainant is that the accused/revision petitioner, towards the discharge of a debt due to the complainant/2nd respondent, issued a cheque dated 31.01.2008 for a sum of Rs.75,000/- (Rupees Seventy five thousand only) which when presented for encashment dishonoured as there was “no sufficient funds” in the account maintained by the accused and the cheque amount was not repaid inspite of a formal demand notice and thus the revision petitioner has committed the offence punishable u/s.138 of Negotiable Instruments Act. With the same

allegation, the complainant approached the Judicial First Class Magistrate Court, Nilamboor and instituted S.T.No.889/2008 by filing a formal complaint, upon which cognizance was taken u/s.138 of Negotiable Instruments Act. During the trial of the case, complainant himself was examined and Exts.P1 to P6 were marked. No evidence adduced from the side of the defence. On the basis of the available materials and evidence on record, the trial court has found that the cheque in question was issued by the revision petitioner/accused for the purpose of discharging his debt due to the complainant/2nd respondent. Thus accordingly the court found that, the complainant has established the case against the accused/revision petitioner and consequently found that the accused is guilty and thus convicted him u/s.138 of Negotiable Instruments Act. On such conviction, the trial court

sentenced the revision petitioner/appellant to undergo simple imprisonment for 2 months and also ordered to pay a compensation of Rs.75,000/- (Rupees Seventy five thousand only) to the complainant/2nd respondent u/s.357(3) of Cr.P.C and the default sentence is fixed as simple imprisonment for 1 month.

3. Aggrieved by the above order of conviction and sentence, the revision petitioner had approached the court below by filing an appeal. But by judgment dated 30.04.2010 in Crl.A.No.199/2009, the Court of Sessions, Manjeri Division (Adhoc-II), Manjeri allowed the appeal only in part and thus while confirming the conviction, the sentence is modified and reduced the imprisonment till raising of the court, but sentenced him to pay a fine of Rs.75,000/- to the complainant/2nd respondent. Default sentence is fixed as 1 month simple imprisonment. It is also ordered that on realization of

the fine amount, the same shall be paid to the complainant as compensation u/s.357(1)(b) of Cr.P.C.

4. I have heard the learned counsel appearing for the revision petitioner and also perused the judgments of the courts below.

5. Reiterating the stand taken by the accused/revision petitioner during the trial and appeal, submitted that the complainant has not established the transaction and also the execution and issuance of the cheque. But no case is made out to interfere with the concurrent findings of the trial court as well as the lower appellate court. Therefore, I find no merit in the revision petition and accordingly the conviction recorded by the courts below against the revision petitioner u/s.138 of Negotiable Instruments Act, is approved.

6. The counsel for the revision petitioner submitted

that sentence imposed by the courts below is highly exorbitant and unreasonable. It is also submitted that some breathing time may be granted to the revision petitioner to pay the amount.

7. Having regard to the facts and circumstances involved in the case, I am of the view that the said submission can be considered positively. The cheque in question is dated 30.01.2008 that too for an amount of Rs.75,000/-. Considering the above facts and circumstances, I am of the view that while granting some time, the fine amount can be enhanced slightly. The apex court in a recent decision reported in **Damodar S.Prabhu V. Sayed Babalal H. (JT 2010 (4) SC 457)** has held that, in the case of dishonour of cheques, the compensatory aspect of the remedy should be given priority over the punitive aspects.

In the result, this revision petition is disposed of confirming the conviction against the revision petitioner

u/s.138 of Negotiable Instruments Act as recorded by the trial court as well as the lower appellate court. Accordingly, the sentence of imprisonment ordered by the lower appellate court against the revision petitioner is confirmed and the revision petitioner is sentenced to pay a fine of Rs.77,000/-(Rupees Seventy seven thousand only) within 3 months from today and in default in paying the fine within the time, he is directed to undergo simple imprisonment for a period of 1 month. On realisation of the fine amount, the entire amount shall be paid to the complainant as compensation u/s.357(1)(b) of Cr.P.C. The revision petitioner is directed to appear before the trial court on 30.10.2010 to receive the sentence and for depositing the fine amount. In case of any failure, the trial court is free to take coercive steps to secure the presence of the revision petitioner and to execute the sentence awarded

against the revision petitioner.

Criminal revision petition is disposed of accordingly.

Sd/-
V.K.MOHANAN,
Judge.

Ss/

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P.A to Judge