

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

THURSDAY, THE 31ST DAY OF JANUARY 2013/11TH MAGHA 1934

Crl.Rev.Pet.No. 257 of 2013

AGAINST THE ORDER/JUDGMENT IN CRA.569/2010 of ADDL. SESSIONS COURT,
NORTH PARAVUR DATED 06-12-2012

AGAINST THE ORDER/JUDGMENT IN ST.36/2009 of J.M.F.C. - II,
NORTH PARAVUR DATED 03-09-2010

REVISION PETITIONER:APPELLANT/ACCUSED :

A.P.VARGHESE, AGED 50 YEARS,
S/O.PAPPU, AKKUNNATH CHIRAKKAKAM KARA,
VARAPUZHA VILLAGE, PARAVUR TALUK,
ERNAKULAM DISTRICT.

BY ADVS.SRI.C.P.PEETHAMBARAN
SRI.M.X.ANTONY LIJO
SMT.MINI.V.A.

RESPONDENTS : COMPLAINANT & STATE:

1. VARGHESE, AGED 40 YEARS,
MANAGING PARTNER,
VYPPIN KURIES & FINANCE, CHERAI,
KAVITHA GOLD SUPER MARKET, S/O.OUSEPH,
KUZHUPPILLY HOUSE, KEDAMANGALAM MURI,
PARAVUR VILLAGE, PARAVUR TALUK,
ERNAKULAM DISTRICT.
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR -SMT.REMA.R.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 31-01-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.K.MOHANAN, J.

Crl.R.P.No.257 of 2013

Dated this the 31st day of January, 2013

ORDER

The accused in a prosecution for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') is the revision petitioner as he is aggrieved by the judgment dated 03/09/2010 in S.T.No.36 of 2009 of the court of Judicial First Class Magistrate-II, North Paravur and the judgment dated 06/12/2012 in Crl.A.No.569 of 2010 of the court of the Additional Sessions Judge, North Paravur.

2. As this Court is not inclined to interfere with the concurrent finding of the court below the learned counsel for the revision petitioner submitted that the sentence imposed against the petitioner is exorbitant and disproportionate to the offence alleged and the petitioner is ready to compensate the complainant for which some time may be given to him.

3. Having regard to the facts and circumstances involved in the case, according to me, the above

submission requires positive consideration especially in the light of the decision of the Apex Court in **Damodar.S.Prabhu v. Sayed Babalal.H.** [JT 2010(4) SC 457], wherein it is held that in the case of dishonour of cheques, the compensatory aspect of the remedy should be given priority over the punitive aspects. But it is relevant to note that the cheque in question is dated 22/03/2008 that too for an amount of ₹35,600/- and so far no amount is paid to the complainant even though the appeal was dismissed on 06/12/2012. Therefore, while modifying the sentence of imprisonment, following the above decision, the interest of the complainant has also to be protected.

In the result, this revision petition is disposed of confirming the conviction of the revision petitioner under Section 138 of the N.I. Act as recorded by the trial court. But the sentence of imprisonment ordered by the trial court and confirmed by the appellate court is modified and reduced into one day simple imprisonment that till the rising of the court. Since the substantial sentence is reduced substantially, the petitioner is sentenced to pay a

fine of ₹42,750/- and the petitioner is directed to deposit the fine amount in the trial court on **02/05/2013**. Failing which the petitioner is directed to undergo simple imprisonment for a period of three months. In case of any failure on the part of the revision petitioner in appearing before the trial court on the above date to receive the sentence fixed by this Court and to pay the fine amount within the time stipulated, the trial court is free to take coercive steps to secure the presence of the revision petitioner and to execute the sentence and to realise the fine amount. On realisation of the fine amount, a sum of ₹42,000/- shall be paid to the complainant as compensation under Section 357(1)(b) of Cr.P.C. and the remaining amount of ₹750/- shall be remitted in the State Exchequer. Coercive steps, if any, pending against the revision petitioner shall be deferred till, **02/05/2013**.

V.K.MOHANAN, JUDGE