

(2015) 03 KL CK 0205

In the High Court Of Kerala

Case No : Criminal Rev.Pet. No. 417 of 2015

Manathrakkattu Padasekhara Nellulpadaka Samithy and
Others

APPELLANT

Vs

The District Manager, Matsyafed and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357(3)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2015) 03 KL CK 0205

Hon'ble Judges : C.T. Ravi Kumar, J

Bench : Single Bench

Advocate : V.G. Arun, T.R. Harikumar and V.P. Sathi, for the Appellant; George Poonthottam, Advocates for the Respondent

Final Decision : Dismissed

Judgement

C.T. Ravi Kumar, J.

1. This revision petition is filed against the conviction concurrently entered against the revision petitioners under section 138 of the Negotiable Instruments Act. The revision petitioners were the accused in C.C. No. 865/2007 on the files of the court of the Judicial First Class Magistrate-I, Alappuzha. They were found guilty and convicted under section 138 of the N.I. Act and consequently, revision petitioners 2 and 3 were sentenced to undergo imprisonment till the rising of the court. They were also directed to pay a compensation of Rs. 1,00,000/- to the complainant under section 357(3) of the Code of Criminal Procedure and default of payment of compensation revision petitioners 2 and 3 were directed to undergo simple imprisonment for a further period of three months each. The revision petitioners filed Crl.A. No. 279/2010 against the said judgment. The said appeal was dismissed confirming the conviction and the sentence imposed against the revision petitioners 2 and 3. This revision petition is filed in the said circumstances.

2. I have heard the learned counsel for the revision petitioners, the learned counsel for appearing for the first respondent and also the learned Public Prosecutor

3. The gist of the case of the complainant/the first respondent was as follows:-

The accused purchased three lakhs seeds of shrimp worth Rs. 90,000/- from the first respondent on 17.11.2006. Going by the agreement the revision petitioners were to repay the amount after harvest which was agreed to be done in the presence of the employees of the first respondent. However, harvest was done in the absence of the employees of the first respondent and at the same time, the revision petitioners failed to effect the repayment as well, as assured. On 26.6.2007 notice was sent to the revision petitioners 2 and 3 on behalf of the first revision petitioner to pay off the debt. Subsequently, revision petitioners 2 and 3 came to the District Office of Malsyafed and issued Ext.P1 cheque for Rs. 90,000/-. The said cheque on its presentation for encashment got dishonoured due to paucity of fund in the account concerned and thereupon, statutory notice was sent by the first respondent. The revision petitioners did not pay the amount due and consequently, the complaint was filed against them.

4. As noticed hereinbefore, conviction was entered against the revision petitioners, concurrently. In such circumstances, to compel this Court to invoke the revisional jurisdiction to interfere with the said impugned judgment the petitioners are either to show that the courts below have appreciated the evidence on record in an utterly perverse manner or that conclusions arrived at are totally against the weight of the evidence on record. Such an interference is also permissible in a case where an error in law is brought out. However, no such case has been brought out by the petitioners warranting interference in exercise of the revisional jurisdiction. When that be so, I find no reason to interfere with the conviction concurrently entered against the revision petitioners under section 138 of the N.I. Act after appreciating the evidence of PWs1 and 2 ad Exts. P1 to P6 on the side of the first respondent herein/the complainant therein and the oral testimonies of the second revision petitioner as DW1. In the said circumstances, the conviction entered against the revision petitioners concurrently, under section 138 of the N.I. Act is confirmed.

5. Obviously, for the conviction under section 138, N.I. Act the revision petitioners 2 and 3 were sentenced to undergo imprisonment till the rising of the court besides the direction to them to pay a compensation of Rs. 1,00,000/- to the complainant under section 357(3), Cr.P.C. with a default clause. The appellate court confirmed the sentence imposed against them. As noticed hereinbefore, the substantive sentence imposed against revision petitioners 2 and 3 is only to undergo imprisonment till the rising of the court. I have already confirmed the conviction and considering the fact they were sentenced only to undergo imprisonment till the rising of the court I do not find any reason to interfere with and modify the same. Ext.P1 cheque is dated 16.7.2007 and the cheque amount is Rs. 90,000/-. Presumably, considering the loss sustained

owing to the action of the revision petitioners for which they were sentenced the revision petitioners were directed to pay a compensation of Rs. 1,00,000/- with a default clause. The direction to pay the said imposed compensation also cannot be said to be exorbitant inviting interference. In the result, sentence to undergo imprisonment and the said direction and also the default clause are maintained. When this Court was about to dismiss the revision petition without any qualification the learned counsel for the revision petitioners submitted that some reasonable time may be granted to the revision petitioners 2 and 3 to effect payment of compensation as ordered. In such circumstances, after hearing both sides, while confirming the conviction and also the sentence imposed against revision petitioners 2 and 3 the learned Magistrate is directed to keep in abeyance the execution of the sentence and also initiation of steps for recovering the compensation for a period of four months to enable the revision petitioners 2 and 3 to effect deposit of the amount of compensation before the trial court and to appear before the court to undergo imprisonment till the rising of the court, within the above stipulated time. Needless to say that in case of failure on the part of the revision petitioners 2 and 3 to deposit the amount of fine and to appear before the trial court within the above time limit, the learned Magistrate shall take appropriate steps, in accordance with law, forthwith.

Subject to the above this revision petition is dismissed.