

(2013) 01 KL CK 0139

In the High Court Of Kerala

Case No : Criminal Rev. Petition No. 1730 of 2002

P.J. Jacob

APPELLANT

Vs

K.J. Benoy and State of Kerala

RESPONDENT

Date of Decision : 07-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357(1)(b)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2013) 01 KL CK 0139

Hon'ble Judges : V.K. Mohanan, J

Bench : Single Bench

**Advocate : K.S. Madhusoodanan and Sri. C.P. Peethambaran, for the Appellant;
K.K. Rajeev, Public Prosecutor, for the Respondent**

Judgement

V.K. Mohanan, J.—The accused in a prosecution for an offence punishable u/s 138 of the NI Act is the revision petitioner as he is aggrieved by the judgment dated 28.11.1997 in C.C. No. 445 of 1995 of the court of Judicial First Class Magistrate-II, Kannur, and the judgment dated 11.10.2002 in CrI. A. No. 422 of 1997 of the court of Sessions, Thalassery. Though the above revision petition was admitted by this Court and received on file by order dated 19.12.2002, so far the service of notice on the respondent, who is the complainant, is not complete. Therefore, the Registry has posted the matter today in the defect list.

2. Heard the counsel for the revision petitioner and I have perused the orders of the courts below.

3. Though the counsel for the revision petitioner sought time to cure the defect, I am not inclined to grant time as prayed for, particularly considering the fact that the courts below concurrently found the guilt of the revision petitioner who faced the prosecution for an offence punishable u/s 138 of the NI Act.

4. As this Court is not inclined to grant time and to interfere with the concurrent findings of the courts below, the counsel for the revision petitioner submitted

that the sentence imposed against the revision petitioner is exorbitant and harsh, and therefore, the same may be set aside and some breathing time may be granted to the petitioner to pay the amount and the petitioner is ready to pay some amount to compensate the complainant. Having regard to the facts and the circumstances referred to above, I am of the view that, the above submission of the counsel for the revision petitioner can be considered positively. 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". Following the dictum laid down by the Honourable Apex court in the decision, according to me, the sentence of imprisonment can be modified and at the very same time, to safeguard the interest of the complainant, the petitioner can be directed to pay some amount as compensation to the complainant. In this juncture it is relevant to note that the cheque in question is dated 1.3.1995, that too for an amount of Rs. 40,000/-. So, according to me, while modifying the sentence of imprisonment, the revision petitioner can also be sentenced to pay a fine of Rs. 74,000/- and out of that fine amount, the complainant can be ordered to pay the compensation.

In the result, this criminal revision petition is disposed of confirming the conviction of the revision petitioner for the offence u/s 138 of the NI Act as recorded by the courts below. Thus, the sentence of imprisonment ordered by the trial court, which is confirmed by the lower appellate court is modified and accordingly the revision petitioner is directed to undergo one day simple imprisonment, i.e., till the rising of the court and he is further sentenced to pay a fine of Rs. 74,000/- and considering the submission of the counsel for the revision petitioner that the revision petitioner is a handicapped person, he is directed to pay the fine amount within 3 months from today and in default, the petitioner is directed to undergo simple imprisonment for a period of 6 months. Accordingly, the petitioner is directed to appear before the trial court on 08.04.2013 to receive the modified sentence ordered by this Court and to deposit the fine amount. Learned counsel for the revision petitioner submitted that, in terms of the order passed by this Court on 17.2.2003 in CrI. M.P. No. 9272 of 2002, the revision petitioner has already deposited half of the cheque amount, i.e., a sum of Rs. 20,000/- and to substantiate the same, learned counsel has shown me a receipt dated 14.3.2003 issued from the trial court. If that be so, the revision petitioner need to deposit a further sum of Rs. 54,000/- being the balance fine amount on the date of his appearance. 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 modified sentence and to deposit the balance fine amount, 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. On realisation of the entire fine amount, a sum of Rs. 70,000/- shall be paid to the complainant as compensation u/s 357(1)(b) of the Cr. P.C. and the remaining amount shall be remitted in the State Exchequer. Coercive steps, if any, pending

against the revision petitioner shall be deferred till 08.04.2013.

The criminal revision petition is disposed of as above.