
(2015) 04 KL CK 0129

In the High Court Of Kerala

Case No : Criminal Rev. Pet. No. 1585 of 2013

Sudarsana Suresh

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

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

Citation : (2015) 04 KL CK 0129

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

Bench : Single Bench

Advocate : K. Ramanathan, for the Appellant; Seena Ramakrishnan, Public Prosecutor, Advocates for the Respondent

Judgement

C.T. Ravi Kumar, J—This revision petition is directed against the conviction concurrently entered against the revision petitioner for the offence under section 138 of the Negotiable Instruments Act. In C.C. No. 68/2008 the Court of the Judicial First Class Magistrate, Ambalappuzha found the petitioner guilty under section 138 of the N.I. Act and sentenced her to undergo simple imprisonment for three months. She was also directed to pay an amount of Rs. 2,00,000/- to the complainant as compensation under section 357 (3) of the Code of Criminal Procedure and in default of payment of compensation to undergo simple imprisonment for a period of three months. The petitioner unsuccessfully taken up the matter in appeal as Crl.A. No. 429/2011 and the Court of the Sessions Judge, Alappuzha dismissed the appeal confirming the conviction as also the sentence were confirmed by the appellate court. This revision petition is filed in the said circumstances.

2. I have heard the learned counsel for the revision petitioner and also the learned Public prosecutor.

3. When this matter is taken up for consideration the learned counsel appearing for the petitioner submitted that the petitioner may be granted some reasonable

time for effecting payment of compensation. As noticed hereinbefore, conviction was concurrently entered against the revision petitioner and the sentence imposed against him by the trial court was also confirmed by the appellate court. In such circumstances, to make this Court to invoke the revisional jurisdiction to interfere with the judgment of the appellate court confirming the judgment passed by the trial court the revision petitioner has to make out a case of utter perverse appreciation of the evidence by the courts below or that is infected with an illegality or an error in law. In this case, obviously, no ground whatsoever has been brought out by the revision petitioner to make this Court to interfere with the impugned judgment invoking the revisional jurisdiction. In the said circumstances, the conviction concurrently entered against the petitioner for the offence under section 138 of the N.I. Act is only to be confirmed accordingly, it is confirmed.

4. For the conviction under section 138 of the N.I. Act the trial court sentenced the petitioner to undergo simple imprisonment for three months besides directing her to pay a compensation of Rs. 2,00,000/- with a default clause. The appellate court confirmed the sentence, as well. The learned counsel for the revision petitioner submitted that since the petitioner is seeking only some reasonable time to effect the payment, the substantive sentence may be interfered with and modified. In the context of the said contention it is relevant to refer to the decisions of the Hon'ble Apex Court in *Damodar S. Prabhu Vs. Sayed Babalal H.*, AIR 2010 SC 1907 : (2010) 3 BC 110 : (2010) 159 CompCas 1 : (2010) CriLJ 2860 : (2010) 4 SCALE 568 : (2010) 5 SCC 663 : (2010) AIRSCW 3739 : (2010) AIRSCW 2929 : (2010) 4 Supreme 149 : (2010) 3 Supreme 547 and *Kaushalya Devi Massand Vs. Roopkishore Khore*, AIR 2011 SC 2566 : (2012) 1 BC 466 : (2011) 2 RCR(Civil) 390 : (2011) 2 RCR(Criminal) 298 : (2011) 3 SCALE 574 : (2011) 4 SCC 593 : (2011) 2 SCC(Cri) 472 : (2011) 3 SCR 879 : (2012) AIRSCW 3613 : (2011) AIRSCW 2283 . In the said decision the Hon'ble Apex Court held that the offences under section 138 of the act are basically of civil nature. It was also held that the intention of the legislature in enacting the provision under section 138 is to make the drawer of the cheque to pay the amount of fine, by giving an opportunity and not to sent him to jail. In the said circumstances and in view of the submissions made by the learned counsel for the petitioner I am inclined to interfere with the substantive sentence imposed by the courts below. In the result, while confirming the conviction entered against the petitioner under section 138 of the N.I. Act the substantive sentence imposed by the trial court on the petitioner to undergo simple imprisonment for three months which was confirmed by the appellate court is set aside and the petitioner is sentenced to undergo imprisonment till the rising of the court. However, the direction to pay compensation of Rs. 2,00,000/- to the complainant under section 357 (3), Cr.P.C and also default clause are maintained. In the said circumstances the learned Magistrate is directed to keep in abeyance the execution of the sentence and also the initiation of steps for recovering the compensation for a period of eight months to enable the petitioner to deposit the amount of compensation before

the trial court and to appear before the trial court to undergo the sentence of imprisonment till the rising of the court, within the above stipulated time. It is made clear that in case of failure on the part of the petitioner to deposit the said amount and to appear before the trial court to suffer the sentence of imprisonment till the rising of the court, within the above stipulated time the learned Magistrate shall take appropriate steps, in accordance with law, forthwith.

In short, the revision petition is allowed in part and disposed of with aforesaid directions.