

(2010) 04 KL CK 0065

High Court Of Kerala

Case No: Criminal Rev. Petition No. 1174 of 2010

Krishnankutty P.T.

APPELLANT

Vs

Auto Credits and Investments
and State of Kerala

RESPONDENT

Date of Decision: April 5, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 357(1), 357(3), 397, 401
- Negotiable Instruments Act, 1881 (NI) - Section 138

Hon'ble Judges: V. Ramkumar, J

Bench: Single Bench

Advocate: P. Vijaya Bhanu, for the Appellant; No Appearance, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V. Ramkumar, J.

In this Revision Petition filed u/s 397 read with Section 401 Cr.P.C. the petitioner who was the accused in C.C. No. 587/2007 on the file of the J.F.C.M. Muvattupuzha challenges the conviction entered and the sentence passed against him for an offence punishable u/s 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act"). The cheque amount was Rs. 34,400/-. The compensation ordered by the lower appellate court is Rs. 40,000/-.

2. I heard the learned Counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned Counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision.

4. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant, that the complainant had validly complied with Clauses (a) and (b) of the proviso to Section 138 of the Act. and that

the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the conviction. The said conviction has been recorded after a careful evaluation of the oral and documentary evidence. This Court sitting in the rarefied revisional jurisdiction will be loath to interfere with the findings of fact recorded by the courts below concurrently. I do not find any error, illegality or impropriety in the conviction so recorded concurrently by the courts below and the same is hereby confirmed.

5. What now survives for consideration is the legality of the sentence imposed on the revision petitioner. In the light of the decision of the Supreme Court in *Ettappadan Ahammedkutty v. E.P. Abdullakoya* 2008 (1) KLT 851 default sentence cannot be imposed for the enforcement of an order for compensation u/s 357(3) Cr.P.C. I am, therefore, inclined to modify the sentence to one of fine only.

Accordingly, for the conviction u/s 138 of the Act the revision petitioner is sentenced to pay a fine of Rs. 43,000/- (Rupees forty three thousand only). The said fine shall be paid as compensation u/s 357(1) Cr.P.C. The revision petitioner is permitted either to deposit the said fine amount before the Court below or directly pay the compensation to the complainant within five months from today and produce a memo to that effect before the trial Court in case of direct payment. If he fails to deposit or pay the said amount within the aforementioned period he shall suffer simple imprisonment for three months by way of default sentence.

In the result, this Revision is disposed of confirming the conviction entered but modifying the sentence imposed on the revision petitioner.

Dated this the 5th day of April, 2010.