

(2011) 02 KL CK 0134

High Court Of Kerala

Case No: Criminal Rev. Petition No. 978 of 2005

Muraleedharan Nambiar

APPELLANT

Vs

U. Sathyan and The State of
Kerala

RESPONDENT

Date of Decision: Feb. 18, 2011

Acts Referred:

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

Hon'ble Judges: M.C. Hari Rani, J

Bench: Single Bench

Advocate: C.R. Sivakumar, for the Appellant; K.V. Reshmi, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M.C. Hari Rani, J.

This revision petition is filed by the accused against the concurrent verdict of guilty, conviction and sentence in a prosecution for the offence u/s 138 of the Negotiable Instruments Act. The trial court found the accused guilty for the offence u/s 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for six months and to pay Rs. 70,000/- as compensation u/s 357(3) of the Code of Criminal Procedure with default sentence of simple imprisonment for one month. The appellate court allowed the appeal in part. The conviction of the Appellant u/s 138 of the Negotiable Instrument Act and direction for payment of compensation are confirmed. Sentence of imprisonment was modified to simple imprisonment for one month. That finding of conviction and sentence has been challenged by the revision Petitioner/accused in this revision petition.

2. Heard the learned Counsel for the revision Petitioner and the learned Counsel for the first Respondent/complainant.

3. At the time of hearing, it is submitted by the learned Counsel for the revision Petitioner that the revision Petitioner is not challenging the concurrent finding of conviction entered into against him for the offence u/s 138 of the Negotiable Instruments Act and also the direction for payment of Rs. 70,000/- as compensation to the complainant u/s 357(3) Code of Criminal Procedure It is prayed to modify the sentence of imprisonment by reducing for imprisonment till rising of the court. The learned Counsel for the revision Petitioner also prayed four months time to pay the amount of compensation.

4. The cheque is dated 10/12/2002 for Rs. 60,000/-. More than eight years is already over. Both the trial court as well as the appellate court directed the accused to pay compensation of Rs. 70,000/- u/s 357(3) Code of Criminal Procedure The appellate court confirmed the conviction and modified the sentence to undergo simple imprisonment for one month. In a case like this substantive sentence can be avoided. The accused was already directed to pay a sum of Rs. 70,000/- to the complainant as compensation. On hearing the submission made by both counsel, I am inclined to modify the sentence by reducing for imprisonment till rising of the court. The revision Petitioner is granted four months time to pay the amount of compensation of Rs. 70,000/-- to the complainant and in default of payment of the said amount, the revision Petitioner/accused is directed to undergo simple imprisonment for two months.

5. In the result,

a) this Criminal revision petition is allowed in part.

b) The conviction of the revision Petitioner for the offence u/s 138 of the Negotiable Instruments Act is confirmed. But the sentence is modified and reduced to imprisonment till rising of the court.

c) The revision Petitioner is granted four months time to deposit/pay the amount of Rs. 70,000/- (Rupees seventy thousand) as compensation u/s 357(3) Code of Criminal Procedure , i.e. on or before 18/6/2011 to the first Respondent/complainant and in case of default of payment/deposit of the said amount, the revision Petitioner is directed to undergo simple imprisonment for two months.

d) If the revision Petitioner is deposited the amount of Rs. 70,000/- on or before 18/6/2011, the first Respondent/complainant is permitted to withdraw the entire amount on filing proper application.

e) The revision Petitioner shall appear and his sureties shall produce him before the learned Magistrate on 20/6/2011 for execution of the sentence.