

(2006) 10 KL CK 0072

High Court Of Kerala

Case No: Criminal Rev. Petition No. 2018 of 2003

K. Raveendran

APPELLANT

Vs

P. Chandrasekharan and State of
Kerala

RESPONDENT

Date of Decision: Oct. 20, 2006

Acts Referred:

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

Hon'ble Judges: R. Basant, J

Bench: Single Bench

Advocate: K.M. Sathyanatha Menon, for the Appellant; P.V. Kunhikrishnan, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R. Basant, J.

This revision petition is directed against a concurrent verdict of guilty, conviction and sentence in a prosecution u/s 138 of the N.I. Act.

2. The cheque is for an amount of Rs. 95,000/-. It bears the date 1.4.1998. The petitioner now faces a sentence of S.I. for a period of three months. There is a toothless direction u/s 357(3) Cr.P.C. to pay an amount of Rs. 95,000/- as compensation. There is no default sentence stipulated.

3. The signature in the cheque is admitted. The notice of demand, though duly received and acknowledged, did not evoke any response. The complainant examined himself as PW 1. Exts. P1 to P5 were marked. The accused did not adduce any evidence - oral or documentary. The accused, who did not choose to respond to the notice of demand, attempted to advance a defence in the course of the trial that the cheque was not issued for the due discharge of any legally enforceable

debt/liability. According to him, he had approached one Valsan for availing a loan of Rs. 20,000/- The said Valsan had taken the petitioner to the complainant. The complainant through the said Valsan advanced an amount of Rs. 20,000/- A blank signed cheque was handed over as security. There was no transaction of loan of Rs. 95,000/- The liability in the loan transaction of Rs. 20,000/- had been paid and discharged. But a totally false claim is being staked against the petitioner by the complainant.

4. The courts below, in these circumstances, concurrently came to the conclusion that the complainant has succeeded in establishing all elements of the offence punishable u/s 138 of the N.I. Act Accordingly they proceeded to pass the impugned concurrent judgments.

5. Called upon to explain the nature of challenge which the petitioner wants to mount against the impugned concurrent judgments, the learned Counsel for the petitioner only reiterates the contentions that were raised before the courts below. He further prays that leniency may be shown on the question of sentence and the petitioner may be given reasonable time to raise the amount and avoid the default sentence by paying the amount.

6. On merits I find absolutely no substance in the contentions raised. Handing over of the cheque is admitted. Though it is contended that the cheque was handed over as blank signed cheque and as security, no materials whatsoever are available to support that contention.

7. The complainant tendered evidence as PW 1. His oral evidence is eminently supported by his ability to produce Ext. P1 cheque, which admittedly bears the signature of the petitioner and which was drawn on a cheque leaf issued to the petitioner by his bank to operate his account. The last trace of doubt, if any, on this question is laid to rest when we consider the undisputed fact that the notice of demand, though duly received and acknowledged, did not evoke any response. That is a conduct inconsistent and incongruent to normal human behaviour. When such a notice threatening criminal prosecution is received by the accused and he chooses to remain silent and inactive the conduct must be held to be eloquent and sufficient to support the oral evidence of PW 1 regarding the transaction.

8. The counsel then prays that leniency may be shown on the question of sentence. I find merit in the prayer for leniency. I have already adverted to the principles governing imposition of sentence in a prosecution u/s 138 of the N.I. Act in the decision in *Anilkumar v. Shammy* 2002 (3) KLT 852. In the facts and circumstances of the case, I do not find any compelling reasons which can persuade this court to insist on imposition of any deterrent substantive sentence of imprisonment on the petitioner. Leniency can be shown on the question of sentence, but subject to the compulsion of ensuring adequate and just compensation to the victim/complainant, who has been compelled to wait from 1998 and to fight three rounds of legal battle

for the redressal of his genuine grievances. The challenge can succeed only to the above extent.

9. The courts below appear to have issued a toothless direction u/s 357(3) Cr.P.C. The Supreme Court has held in [Hari Kishan Vs. Sukhbir Singh and Others](#), and [Suganthi Suresh Kumar Vs. Jagdeeshan](#), that direction for payment can be enforced by a default sentence. A toothless direction to pay compensation u/s 357(3) Cr.P.C. is unlikely to ensure the interests of justice for the complainant. Such a direction deserves to be issued though maximum leniency can be shown on the question of substantive sentence of imprisonment.

10. In the result:

(a) This revision petition is allowed in part.

(b) The impugned verdict of guilty and conviction of the petitioner u/s 138 of the N.I. Act are upheld.

(c) But the sentence imposed is modified and reduced. In super session of the sentence imposed on the petitioner by the courts below, he is sentenced to undergo imprisonment till rising of court. He is further directed u/s 357(3) Cr.P.C. to pay an amount of Rs. 1,10,000/- (Rupees one lakh ten thousand only) as compensation and in default to undergo S.I. for a period of two months. If realised the entire amount shall be released to the complainant forthwith.

11. The petitioner shall appear before the learned Magistrate on or before 30.12.2006 to serve the modified sentence hereby imposed. The sentence shall not be executed till that date. If the petitioner does not so appear, the learned Magistrate shall thereafter proceed to take necessary steps to execute the modified sentence hereby imposed.