2024:KER:76716

**"C.R."**

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE K. BABU**

**TUESDAY, THE 8TH DAY OF OCTOBER 2024 / 16TH ASWINA, 1946**

**CRL.REV.PET NO. 380 OF 2024**

**AGAINST THE ORDER/JUDGMENT DATED 11.12.2023 IN ST NO.65 OF 2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II, KASARAGOD**

**REVISION PETITIONER/S:**

**ASHOK KUMAR**
**AGED 44 YEARS**
**S/O. KRISHNA ALWA, R/AT. KIRAN NIVAS, KALAI,**
**PAIVALIKE VILLAGE AND POST, MANJESHWAR TALUK,**
**KASARAGOD, PIN - 671348**

**BY ADVS.**
**ENOCH DAVID SIMON JOEL**
**S.SREEDEV**
**RONY JOSE**
**LEO LUKOSE**
**KAROL MATHEWS SEBASTIAN ALENCHERRY**
**DERICK MATHAI SAJI**
**KARAN SCARIA ABRAHAM**

2024:KER:76716

**RESPONDENT/S:**

1 HASSAINAR
AGED 47 YEARS
S/O. ABDUL KHADAR, HOTEL BANDE NAVAZ, PAIVALIKE, BAMBLADKA, NEAR BAYIKATTE, POST PAIVALIKE, MANJESHWAR TALUK, KASARAGOD, PIN - 671348

2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI, PIN - 682031

R1 BY ADVS.
ARUNKUMAR A
S.SHYAM KUMAR(K/369/2010)
SACHIN GEORGE ARAMBAN(K/003007/2022)
R2 BY SRI G SUDHEER, PUBLIC PROSECUTOR

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 08.10.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

2024:KER:76716

**“C.R.”**

**K.BABU, J.**

---

**Crl.R.P.No.380 of 2024**

---

Dated this the 8th day of October, 2024

**O R D E R**

The revision petitioner is the complainant in ST No.65 of 2021 on the file of the Judicial First Class Magistrate Court-II, Kasargod. The revision petitioner filed a complaint alleging offence punishable under Section 138 of the Negotiable Instruments Act against respondent No.1. The trial Court convicted respondent No.1 under Section 138 of the NI Act and sentenced him to undergo simple imprisonment till the rising of the Court and pay a fine of Rs.4,50,000/-.

2. The sentence imposed is under challenge in this Revision at the instance of the petitioner/complainant.

2024:KER:76716

The revision petitioner contends that the sentence is not adequate. It is submitted that the Court below imposed only a meagre sentence without taking into account the gravity of the offence.

3. Heard the learned counsel for the revision petitioner, the learned counsel appearing for respondent No.1 and the learned Public Prosecutor.

4. It is submitted that the appeal challenging the conviction and sentence passed by the trial Court is pending before the Sessions Court, Kasargod, as Crl.Appeal No.4 of 2024.

5. The learned counsel for the revision petitioner submitted that since the appeal challenging the conviction and sentence is pending before the Sessions Court, the revision petition filed by the complainant seeking enhancement of the sentence is to be transferred to the Sessions Court for disposal along with the Crl.

2024:KER:76716

Appeal. The learned counsel for the revision petitioner relied on Section 402 Cr.PC in support of his contention.

6. Section 402 Cr.PC, which is *pari materia* with Section 443 of the BNSS reads thus:-

> **402. Power of High Court to withdraw or transfer revision cases**
>
> (1) Whenever one or more persons convicted at the same trial makes or make application to a High Court for revision and any other person convicted at the same trial makes an application to the Sessions Judge for revision, the High Court shall decide, having regard to the general convenience of the parties and the importance of the question involved. Which of the two Courts should finally dispose of the applications for revision and when the High Court decides that all the application for revision should be disposed of by itself, the High Court shall direct that the applications for revision pending before the Sessions Judge be transferred to itself and where the High Court decides that it is not necessary for it to dispose of the applications for revision, it shall direct that the applications for revision made to it be transferred to the Sessions Judge.

2024:KER:76716

(2) Whenever any application for revision is transferred to the High Court, that Court shall deal with the same as if it were an application duly made before itself.

(3) Whenever any application for revision is transferred to the Sessions Judge, that Judge shall deal with the same as if it were an application duly made before himself.

(4) Where an application for revision is transferred by the High Court to the Sessions Judge, no further application for revision shall lie to the High Court or to the any other Court at the instance of the person or persons whose applications for revision have been disposed of by the Sessions Judge.

7. As both the High Court and the Sessions Court possess revisional power, it may happen that in a joint trial, some accused may come in revision before the High Court and some before the Sessions Court. The mandate of Section 402 is that a conflict of jurisdiction is avoided by reposing in the High Court, the power initially to

2024:KER:76716

decide whether all of them should be decided by itself or all of them should be decided by the Sessions Court, keeping in view the importance of the questions involved and the general convenience of the parties.

8. As per Section 402 Cr.PC the High Court has the power to transfer the revision pending before the Sessions Court to the High Court for consideration and disposal of both matters together. The High Court may also direct the application for revision to be transferred to the Sessions Court. Whenever any application for revision is transferred to the High Court, the Court shall deal with the same as if it were an application duly made before itself. The High Court may also transfer the revision made to it to the Sessions Court. Whenever an application for revision is transferred by the High Court to the Sessions Court, the Sessions Judge shall deal with

2024:KER:76716

the same as if it were an application duly made before himself.

9. In the present case, the judgment of conviction and sentence is under challenge before the Sessions Court, Kasargod, at the instance of the accused. The sentence is under challenge before the High Court at the instance of the complainant. Section 402 of the Code deals with a different situation. Any person convicted on a trial held by a Magistrate of the First Class may appeal to the Court of Session under Section 374(3) of the Code. Therefore, the appeal preferred by the accused is to be decided by the Sessions Court. If the revision petition preferred by the complainant in the High Court is left to be decided here, it may lead to a conflict of decisions. In order to avoid a conflict of jurisdiction, the High Court can exercise its inherent powers to order transfer of the revision to the Sessions Court.

2024:KER:76716

10. In the result, the revision petition is transferred to the Sessions Court, Kasargod, which shall deal with the same as if it were a revision duly made before itself, along with Crl.Appeal No.4 of 2024.

11. The Registry shall transmit the Judge's Papers of the revision to the Sessions Court, Kasargod, forthwith.

The Crl.Revision Petition is disposed of accordingly.

Sd/-
**K.BABU,**
**JUDGE**

kkj