

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

Crl.Rev.Pet.No. 404 of 2003 ()

AGAINST THE JUDGMENT IN CRL.A 86/2001 of SESSSIONS COURT, THRISSUR
ARISING OUT OF ST 356/1998 of JUDL.FIRST CLASS MAGISTRATE'S COURT
III, THRISSUR

REVISION PETITIONER/APPELLANT/ACCUSED:

A.D.HELSON, S/O. DEVASSY,
AKKARA HOUSE, ST.SEBASTIAN STREET, P.O. OLLUR
THRISSUR DISTRICT.

BY ADVS.SRI.BABU S. NAIR
SRI.JIJO PAUL

RESPONDENTS/RESPONDENTS/STATE & COMPLAINANT:

1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.
2. T.I.JANARDHANAN, S/O. ITTAMAN,
THAZHATHA HOUSE, P.O. MARATHAKARA, THRISSUR DIST.

BY ADVS. SRI.V.BINOY RAM
PUBLIC PROSECUTOR SRI.JUSTIN JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 01-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No. 404 of 2003

Dated this the 1st day of September, 2015

ORDER

The revision petitioner is the accused in ST 356/1998, on the files of Judicial Magistrate of First Class III, Thrissur. The revision petitioner was convicted by the trial court, under Section 138 of the Negotiable Instrument Act and sentenced to simple imprisonment for 15 days and to pay a compensation of Rs.35,000/- to the complainant, under Section 357 (3) Cr.P.C. Against the said conviction and sentence, the revision petitioner filed an appeal before the Sessions Court. The Sessions Court as per judgment in Crl. Appeal 86/2001, dismissed the appeal, confirming the conviction and sentence passed by the Trial Court. Aggrieved by the said conviction and sentence, the present revision petition has been filed.

2. The prosecution allegation is that the appellant borrowed an amount of Rs.30,000/- from the complainant

and towards the discharge of the said liability, the revision petitioner issued Exts.P1 and P2 cheques in favour of the complainant. The complainant presented the said cheques for encashment. However the said cheques were dishonoured due to insufficiency of funds in the account of the accused. Statutory notice was issued to the revision petitioner which was received by the revision petitioner. However the revision petitioner did not pay the cheque amount within the statutory period, thereafter.

3. Before the court below, PW1 was examined and Exts.P1 to P4 were marked for the complainant. No evidence was adduced on the side of the accused. The courts below concurrently found that the complainant succeeded in establishing that the accused executed Exts.P1 and P2 cheques as contended by the complainant, relying on the documentary as well as oral evidence adduced by the complainant. Having gone through the judgments of the courts below, I am satisfied that the courts below had appreciated evidence correctly and entered into

a finding that the revision petitioner has committed the offence under Section 138 of the N.I Act. Since there is concurrent finding on the facts by the courts below, this Court will not be justified in interfering with the same, particularly when the said findings are not perverse or incorrect or illegal. For the said reason, I am not inclined to interfere with the findings of the courts below that the accused had committed the offence punishable under Section 138 of the N.I Act.

4. Now the question to be considered is the quantum of the sentence to be awarded to the revision petitioner. The amount covered by the cheques involved in this case is for Rs.15,000/- each. Considering the facts and circumstances of the case, including the amount covered by Exts.P1 and P2 cheques, I am of the view that the sentence awarded by the courts below can be modified and reduced to secure the ends of justice and accordingly my order so.

5. In the result, this revision petition stands allowed in part,

1) confirming the verdict of guilty and conviction passed by the courts below, under section 138 of the N.I Act.

2) the Sentence awarded by the courts below stands modified and reduced to imprisonment till the rising of the court and a fine of Rs.35,000/-(Rupees thirty five thousand only).

3) in default of payment of the fine, the revision petitioner shall undergo simple imprisonment for a period of three months. In the event of realisation of fine amount, the entire amount shall be given to the complainant, under Section 357(1) Cr.P.C.

4) the revision petitioner is granted three months time to comply with the direction of payment of fine in this order, as requested by the learned counsel for the revision petitioner.

Sd/-

B.SUDHEENDRA KUMAR
JUDGE

sm/