

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

Crl.Rev.Pet.No. 65 of 2009 ()

AGAINST THE JUDGMENT IN CRL.A. 736/2003 of
ADDL.DISTRICT COURT (ADHOC)-III, THALASSERY
DATED 27-03-2008

AGAINST THE JUDGMENT IN CC 54/2001 of CHIEF JUDICIAL
MAGISTRATE, THALASSERY DATED 10-09-2003

REVISION PETITIONER(S) :

G.VALSALA KUMARI, W/O.RATNAKARAN, 48
YEARS, RESIDING AT ASHOK BHAVAN , PO.KARANGODE
CHATHANNOOR, KOLLAM DISTRICT.

BY ADV. SRI.R.SURENDRAN

RESPONDENT(S) :

1. P.PANKAJAKSHAN, S/O.CHATHU, 46 YEARS
BUSINESS MAN, RESIDING AT PUTHIYEDATH HOUSE
KOLAVALLUR AMSOM DESOM, CHERUPARAMBA PO.,
KANNUR.

2. STATE OF KERALA, REP. BY ITS PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

FOR R1 ADV. SRI.K.P.HAREENDRAN &
ADV. SMT.MIJI JOHN

PUBLIC PROSECUTOR SRI. V.S. SREEJITH FOR R2

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 06-11-2015, THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
Crl.R.P. No. 65 of 2009
.....

Dated this the 6th day of November, 2015

ORDER

The revision petitioner is the accused in C.C. No. 54 of 2001 on the files of the court of the Chief Judicial Magistrate, Thalassery.

2. The trial Court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to simple imprisonment for three months and a fine of Rs. 2,10,000/- with a default clause for simple imprisonment for one month. In the appeal, the conviction was confirmed and the sentence was modified and reduced to a fine of Rs.1,50,000/- with a default clause for simple imprisonment for three months. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard both sides.

4. The prosecution allegation is that the revision petitioner issued Ext. P1 cheque in favour of the complainant towards the discharge of the liability of the revision petitioner to the complainant in connection with the purchase of a bus by the revision petitioner from the complainant. The complainant presented the said cheque for encashment. However, the same was dishonoured due to insufficiency of funds in the account of the revision petitioner. Statutory notice was issued on behalf of the complainant, which was received by the revision petitioner. However, the revision petitioner did not pay the cheque amount within the statutory period or thereafter.

5. Before the trial court, PW1 was examined and Exts. P1 to P8 were marked for the complainant. No evidence was adduced on the side of the defence.

6. After evaluating the oral and documentary evidence

adduced by the complainant, the courts below concurrently found that the revision petitioner executed Ext. P1 cheque as contemplated under Section 138 of the N.I. Act. The defence set up by the revision petitioner was also repelled by the courts below. Since there is concurrent finding on facts, this Court will not be justified in interfering with the same unless the finding is perverse or incorrect. No circumstance has been brought to my notice to indicate that the concurrent finding by the courts below is perverse or incorrect. In the said circumstances, the concurrent finding by the courts below that the revision petitioner committed the offence under Sec. 138 of the N.I. Act does not warrant any interference by this Court.

7. Ext. P1 cheque is for an amount of Rs. 2,00,000/-. The appellate court recorded that an amount of Rs. 70,000/- was received by the first respondent herein in the execution of the decree in the civil case. In view of the above reason, the appellate

court reduced the sentence to a fine of Rs. 1,50,000/-
Considering the facts and circumstances, including the amount covered by Ext. P1 cheque and the amount received by the first respondent herein, I am of the view that the sentence awarded by the appellate court can be further modified and reduced to a fine of Rs. 1,30,000/- (Rupees one lakh thirty thousand only) to meet the ends of justice and accordingly, I order so.

In the result, this Revision Petition stands allowed in part.

- i) confirming the verdict of guilty and conviction passed by the courts below under Sec. 138 of the N.I.Act.
- ii) the sentence awarded by the appellate court under Section 138 of the N.I.Act stands modified and reduced to a fine of Rs. 1,30,000/-(Rupees one lakh thirty thousand only)
- iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment

for two months.

iv) in the event of realisation of the fine amount, the entire amount shall be given as compensation to the complainant under Sec. 357 (1) (b) Cr.P.C.

The revision petitioner is granted six months to pay the fine as requested by the learned counsel for the revision petitioner.

Dated this the 6th day of November, 2015.

B. SUDHEENDRA KUMAR, JUDGE.