

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 85 of 2009 ()

Crl.A 164/2005 of ADDL. SESSIONS COURT (SPL. COURT), KOTTAYAM
ST 719/2003 of J.M.F.C.-II, KANJIRAPPALLY

REVISION PETITIONER(S)/REVISION PETITIONER/RESPONDENT/COMPLAINANT:

P.C.VARGHESE, PAYYAMPALLIL,
MUKKOOTTUTHARA P.O., KOTTAYAM.

BY ADV. SRI.TITUS MANI VETOM

RESPONDENT(S)/APPELLANT/ACCUSED/STATE:

1. THE STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.
2. AYISHA IBRAHIM, PLAMOOTTIL,
MUTTAPPALLY P.O., MUKKOOTTUTHARA, KOTTAYAM.

R1 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH
R2 BY ADV. SRI.B.PREMOD

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
15-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P.No.85 of 2009

Dated this the 15th day of December 2015

O R D E R

The complainant in S.T. No.719 of 2003 on the files of the court of the Judicial Magistrate of First Class- II, Kanjirappally, is the revision petitioner herein. The revision petitioner filed a complaint against the 2nd respondent herein before the trial court alleging the offence under Section 138 of the Negotiable Instruments Act.

2. The trial court convicted the accused under Section 138 of the the N.I. Act and sentenced her to simple imprisonment for three months and a fine of Rs.5,000/- with a default clause for simple imprisonment for one

month. In the appeal, the sentence of imprisonment for three months was modified and reduced to imprisonment till the rising of the court. The appellate court also modified the fine to Rs.10,000/-. Aggrieved by the inadequacy of sentence, this revision petition has been filed.

2. Heard.

3. It is borne out from the records that Ext.P1 cheque is for Rs.20,000/-. In the said circumstances, the court below, while reducing the sentence of imprisonment ought to have enhanced the compensation, taking into consideration of the amount covered by Ext.P1 cheque. In the said circumstances, the sentence awarded by the appellate court cannot be said to be proper and correct and

consequently, it cannot be sustained.

In the result, this revision petition stands allowed setting aside the sentence awarded by the appellate court and the matter is remitted to the appellate court for awarding the sentence afresh, in accordance with law, affording reasonable opportunity to both sides of being heard.

The revision petitioner shall appear before the appellate court on 14.1.2016.

sd/-

**B.SUDHEENDRA KUMAR,
JUDGE**

dl/15.12..2015

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PA to Judge