

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

Crl.Rev.Pet.No. 271 of 2009 ()

AGAINST THE JUDGMENT IN CRL.APPEAL 328/2007 of COURT OF ADDITIONAL
SESSIONS JUDGE-II, MAVELIKKARA DATED 21-11-2008

AGAINST THE JUDGMENT IN CC 682/2005 of J.M.F.C.-I, CHENGANNUR

REVISION PETITIONER/APPELLANT/ACCUSED:

P.NARAYANA PILLAI @ P.N.NEDUVELI,
S/O.PADMANABHAN PILLAI, NEDUVAMPADI VEEDU,
KURATTISSERY MURI, KURATTISSERY VILLAGE.

BY ADV. SRI.R.GIREESH VARMA

RESPONDENTS/RESPONDENTS/COMPLAINANT:

1. C.N.MURALI,
SARANYAYIL KUTTAMPEROOR MURI, MANNAR VILLAGE.
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

R1 BY ADVS. SRI.GEORGE VARGHESE (PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SMT.SURYA SASI
R2 BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 30-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No. 271 of 2009

Dated this the 30th day of September, 2015

ORDER

The revision petitioner is the accused in CC No.682/2005 on the files of the court of the Judicial Magistrate of First Class-I, Chengannur.

2. The revision petitioner was convicted by the trial court under Section 138 of the Negotiable Instruments Act and sentenced thereunder to simple imprisonment for three months and to pay a compensation of Rs.1,50,000/- to the complainant under Section 357 (3) Cr.PC. The appellate court as per judgment dated 21.11.2008, in Crl. Appeal 328/2007, dismissed the appeal filed by the revision petitioner confirming the conviction and sentence passed by the trial court. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard.

4. The prosecution allegation is that the revision petitioner borrowed an amount of Rs.1,50,000/- from the complainant. Towards the discharge of the said liability, the revision petitioner issued Ext.P1 cheque in favour of 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 make payment of the cheque amount within the statutory period or thereafter.

5. Before the trial court, PW1 was examined and Exts.P1 to P9 were marked for the complainant. No evidence was adduced by the revision petitioner.

6. After evaluating the documentary as well as the oral evidence adduced by the complainant, the courts below concurrently found that the revision petitioner executed Ext.P1 cheque as contemplated under Section 138 of 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. In this case, no circumstance has been brought to my notice to indicate that the concurrent finding of the courts below that the revision petitioner executed Ext.P1 cheque, is perverse or incorrect. Having gone through the relevant inputs, I am satisfied that the courts below correctly appreciated the evidence and came to the conclusion that the revision petitioner committed the offence under Section 138 of the N.I Act. In the said circumstances, I find no reason to interfere with the concurrent finding of the courts below that the revision petitioner committed the offence under Section 138 of the N.I Act.

7. The amount covered by Ext.P1 cheque is Rs.1,50,000/-. Considering the facts and circumstances of the case, including the amount covered by Ext.P1 cheque, I am of the view that the sentence awarded by the courts below can be modified and reduced to imprisonment till the rising of the court and a

fine of Rs.1,50,000/- to meet the ends of justice. Accordingly I order so.

8. 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 under Section 138 of N.I Act stands modified and reduced to imprisonment till the rising of the court and a fine of Rs.1,50,000/-(Rupees one lakh fifty thousand only).
3. in default of payment of fine, the revision petitioner shall undergo simple imprisonment for two months.
4. in the event of realisation of the fine amount, the entire amount shall be given to the complainant as compensation under Section 357(1) (b) Cr.PC.

Sd/-
B.SUDHEENDRA KUMAR
JUDGE

sm/