

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

Crl.Rev.Pet.No. 725 of 2012 ()

CRL.A 372/2009 of II ADDL.SESIONS COURT,KOLLAM
CC 900/2005 of J.M.F.C., PARAVOOR

REVISION PETITIONER/2ND ACCUSED:

RAVEENDRAN NAIR,
RESIDING AT RAVIDASA, MAMBALLIKUNNAM, CHATHANNOR
KOLLAM

BY ADV. SRI.HARISH GOPINATH

RESPONDENTS/STATE & COMPLAINANT:

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA ERNAKULAM
 2. SREEDHARAN UNNITHAN,
RESIDING AT VINOD BHAVAN, ERAM, CHATHANNOR, KOLLAM- 691572

R1 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
04-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P.No.725 of 2012

Dated this the 4th day of November 2015

O R D E R

The revision petitioner is the 2nd accused in C.C.No.900 of 2005 on the files of the Court of the Munsiff -Magistrate, Paravoor.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short “the N.I.Act”) and sentenced him thereunder to simple imprisonment for four months and to pay an amount of Rs.25,000/- to the complainant as compensation under Section 357(3) of the Code. In the appeal, the

conviction was confirmed and the sentence was modified and reduced to imprisonment till the rising of the court and a compensation of Rs.55,000/- to the complainant under Section 357(3) of the Code. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard.

4. The prosecution allegation is that the revision petitioner issued Ext.P1 cheque in favour of the complainant towards the discharge of the liability to 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 to the revision petitioner, 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 and PW2 were examined and Exts.P1 to P7 were marked for the complainant. Exts.D1 to D3 were marked for the revision petitioner.

6. The courts below, relying on the documentary as well as oral evidence adduced by the parties, concurrently found that the revision petitioner had 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 appreciation of evidence by the courts below was perverse or incorrect. The courts below found the revision petitioner guilty under Section 138 of the N.I.Act and convicted him thereunder. Having gone through the relevant inputs, I do not find any reason to interfere with the concurrent finding by the courts below that the revision petitioner committed the offence under Section 138 of the N.I.Act.

7. The cheque is for Rs.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.50,000/- to secure the ends of justice.

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 Section 138 of the N.I. Act,
- (ii) the sentence awarded by the courts below under Section 138 of the N.I. Act stands modified and reduced to imprisonment till the rising of the court and a fine of Rs.50,000/-. (Rupees fifty 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, the entire amount shall be given to the complainant as compensation under Section 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.

Needless to state that the amount, if any, deposited by the revision petitioner before the trial court in connection with this case, will be treated as part payment of fine ordered by this Court.

I make it clear that the payment, which may be directly made to the complainant, will be treated as sufficient compliance of the payment of fine as per this order, provided the complainant files an affidavit before the trial court in this regard.

Sd/

**B.SUDHEENDRA KUMAR,
JUDGE**

dl/6.11.2015

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PA to Judge