

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

Crl.Rev.Pet.No. 1473 of 2009 ()

CRL.A 191/2007 of ADDL.SESIONS COURT (ADHOC)-II, KOTTAYAM
ST 784/2005 of J.M.F.C.-II, KANJIRAPPALLY

REVISION PETITIONER(S)/APPELLANT/ACCUSED.:

M.R.RAJENDRAN, MUKKILIKATTU HOUSE,
ELAMPALLY P.O., VELLIYETHU KAVALA, KOTTAYAM.

BY ADV. SRI.M.P.MADHAVANKUTTY

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE.:

1. BABICHAN V.J., VELLAPPALLIL HOUSE,
ELAMPALLY P.O., VELLIYETHU KAVALA, KOTTAYAM.
2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.R.PARTHASARATHY
R1 BY ADV. SRI.ROY GEORGE
R2 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
12-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1473 of 2009

Dated this the 12th day of November 2015

O R D E R

The revision petitioner is the accused in S.T.No.784 of 2005 on the files of the Court of the Judicial Magistrate of First Class - II, Kanjirappally.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 (“the N.I.Act” for short) and sentenced him thereunder to simple imprisonment for nine months and to pay compensation of Rs.75,000/- to the complainant under Sec. 357 (3) Cr.P.C. The appeal filed against the said conviction and sentence was dismissed. Aggrieved by the

said conviction and sentence, this Revision Petition has been filed.

3. Heard.

4. The prosecution allegation is that towards the discharge of an amount of Rs.1,25,000/- borrowed by the revision petitioner from the complainant, 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 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 was examined and Exts.P1 to P6 were marked for the complainant. DW1 to DW4 were examined and Exts.D1 to D3 were marked for the revision petitioner.

6. The trial court, relying on the documentary as well as oral evidence adduced by the parties, 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 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.1,25,000/-. 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.1,25,000/- 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.1,25,000/- (Rupees one lakh twenty five 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 four months to pay the fine, as requested by the learned counsel for the revision petitioner.

Sd/-

**B.SUDHEENDRA KUMAR,
JUDGE**

dl/12.11.2015

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PA to Judge