

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

Crl.Rev.Pet.No. 1476 of 2009 ()

**AGAINST THE JUDGMENT IN CRA 32/2008 of ADDL.SESIONS COURT (ADHOC)III,
MANJERI DATED 25-03-2009**

**AGAINST THE JUDGMENT IN ST 97/2006 of J.M.F.C.-II(FOREST OFFENCES),MANJERI
DATED 03-01-2008**

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**SAJITHA THARAMMEL,
THARAMMEL HOUSE, CHANDAKUNNU P.O.
MALAPPURAM DISTRICT.**

BY ADV. SRI.DILIP MOHAN

RESPONDENT(S)/COMPLAINANT/STATE:

- 1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.**
- 2. THOTTATHIL RAJAN,
THOTTATHIL HOUSE IRUMPOOZHI, MANJERI, MALAPPURAM.**

R2 BY ADV. SRI.BABU S. NAIR

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09-
10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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B.SUDHEENDRA KUMAR,J.

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Cr.R.P.No.1476 of 2009

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Dated this the 9th day of October, 2015

JUDGMENT

The revision petitioner is the accused in S.T.97/06 on the files of the Court of the Judicial Magistrate of First Class -II (Forest Offences, Manjeri).

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced her thereunder to simple imprisonment for three months and to pay an amount of Rs.50,000/- to the complainant as compensation under Section 357 (3) of the Code. In the appeal filed against the said conviction and sentence, the Appellate Court confirmed the conviction and sentence. However, the order passed by the trial court under Section 357 (3) of the Code was set aside. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. The prosecution allegation is that the revision petitioner borrowed an amount of Rs.50,000/- from the

complainant and towards the discharge of the said liability, the revision petitioner executed Ext.P1 cheque in favour of the complainant. The complainant presented the said cheque for encashment. However, the said cheque was dishonored 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.

4. Before the trial court, PW 1 was examined and Exts.P1 to P5 were marked for the complainant. DW1 was examined for the revision petitioner.

5. The court below, after evaluating the oral and documentary evidence adduced by the parties, concurrently found that the revision petitioner executed Ext.P1 cheque as contemplated under Section 138 of the Negotiable Instruments Act. The defence set up by the revision petitioner was repelled by the courts below. Since there is concurrent finding on facts by the courts

below, 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 of the courts below that the revision petitioner committed the offense under Section 138 of the Negotiable Instruments Act does not warrant any interference by this Court.

6. Ext.P1 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 raising of the Court and a fine of Rs.50,000/- to meet the ends of justice.

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 Negotiable Instruments Act.

2) the sentence awarded by the courts below under Section 138 of the Negotiable Instruments Act stands modified and reduced to imprisonment till the rising of the court and a fine of Rs.50,000/- (Rupees Fifty Thousand Only).

3) in default of the fine, the revision petitioner shall undergo simple imprisonment for one month.

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

**Sd/-
B.SUDHEENDRA KUMAR
JUDGE**

//TRUE COPY//

PA TO JUDGE

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