

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

Cr1.Rev.Pet.No. 1513 of 2009 ()

AGAINST THE JUDGMENT IN CRL.APPEAL 769/2006 of ADDL. DISTRICT AND
SESSIONS COURT (ADHOC) FAST TRACK COURT NO.II, THRISSUR
DATED 04-03-2009

AGAINST THE JUDGMENT IN CC 1294/2003 of J.F.C.M, KODUNGALLUR.

REVISION PETITIONER/APPELLANT/ACCUSED:

NUSAIBA, W/O. ABDULLAKUTTY,
VALIYAKATH HOUSE, KALAMURI,
KAIPAMANGALAM P.O.,
KAIPAMANGALAM.

BY ADVS. SRI. RAJIT
SRI. RANJIT BABU

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM
2. SURESH, S/O. KUNJAPPU, KOCHIPARAMBATH HOUSE,
PERINJANAM VILLAGE, P.O. ERINGANAM,
KODUNGALLUR.

BY PUBLIC PROSECUTOR SRI. V. S. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 01-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No. 1513 of 2009

Dated this the 1st day of October, 2015

ORDER

The revision petitioner is the accused in CC 1294/2003 on the files of the court of the Judicial Magistrate of First Class, Kodungallur.

2. The revision petitioner was convicted by the trial court under Section 138 of the N.I Act and sentenced thereunder to simple imprisonment for one year and to pay compensation of Rs.75,000/- to the complainant under Section 357 (3) Cr.PC. In the appeal filed against the said conviction and sentence, the appellate court as per judgment in Crl.Appeal 769/2006, confirmed the conviction and modified the sentence to imprisonment till the rising of the court and to pay a compensation of Rs.1,75,000/- to the complainant, with the default clause for simple imprisonment for one year. 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 of the revision petitioner to the complainant. The complainant presented the said cheque for encashment. However, the same was dishonoured due to closure of account by 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 of thereafter.

5. Before the trial court, PW1 was examined and Exts.P1 to P5 were marked for the complainant. No evidence was adduced by the defence. PW1 was not even cross-examined on behalf of the complainant. The courts below after evaluating the oral and documentary evidence adduced by the complainant, concurrently found that the

revision petitioner executed Ext.P1 cheque as contemplated under Section 138 of N.I Act. 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 finding of the courts below with regard to the execution of Ext.P1 cheque by the revision petitioner, is perverse or incorrect. Having gone through the records, 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.

6. The amount covered by Ext.P1 cheque is Rs.1,69,000/-. Even though it has been submitted by the learned counsel for the revision petitioner that the revision petitioner had altogether paid an amount of Rs.46,500/- to

the complainant, there is no material before the court to prove the same. The judgment of the court below would show that an amount of Rs.35,000/- was paid by the revision petitioner to the complainant, during the pendency of this case.

Considering the facts and circumstances of the case, including the amount paid by the revision petitioner and the amount covered by the 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.1,35,000/- to meet the ends of justice and accordingly I order so.

7. 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.1,35,000/-(Rupees one lakh thirty five 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.

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

Sd/-
B.SUDHEENDRA KUMAR
JUDGE

//TRUE COPY//

P.A.TO JUDGE

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