

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

Crl.Rev.Pet.No. 1514 of 2009 ()

AGAINST THE JUDGMENT IN CRA 338/2008 of ADDL.DISTRICT COURT
(ADHOC)-II, ALAPPUZHA DATED 7-2-2009
AGAINST THE JUDGMENT IN CC 572/2006 of C.J.M., ALAPPUZHA
DATED 17-6-2008

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

HARIPRIYAN, AGED 50 YEARS,
S/O. THANKAPPAN "NANDANAM", SANATHANAPURAM P.O.
KAITHAVANA, ALAPPUZHA.

BY ADV. SRI.B.PRAMOD

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. CHANDRASEKHARAN NAIR, AGED 56 YEARS
S/O.P.K.VASU PILLAI, PREM NIVAS, KALAPPURACKAL
ALAPPUZHA.

2. THE STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.A.KRISHNAN
BY PUBLIC PROSECUTOR SRI. R. GITHESH FOR R2

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.

.....
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.....

Dated this the 1st day of October, 2015

ORDER

The revision petitioner is the accused in C.C. No. 572 of 2006 on the files of the court of the Chief Judicial Magistrate, Alappuzha.

2. The trial Court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him thereunder to simple imprisonment for three months and a fine of Rs. 5,00,000/- with a default clause for simple imprisonment for three months. The appeal filed against the said conviction and sentence was dismissed by the appellate court as per judgment in Crl.A. 338 of 2008. Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

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3. The case of the complainant is that on 7-6-2005, the revision petitioner borrowed an amount of Rs. 5,00,000/- from the complainant and towards the discharge of the said liability the revision petitioner issued Ext. P1 cheque in favour of the complainant. The complainant presented the 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 pay the cheque amount within the statutory period or thereafter.

4. Before the court below, PW1 was examined and Exts. P1 to P6 were marked for the prosecution. No evidence was adduced on the side of the defence.

5. 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 Sec. 138 of the N.I.Act. The defence set up by

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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 concurrent finding of the courts below is perverse or incorrect. In the said circumstances, the concurrent finding of the courts below that the revision petitioner committed the offence under Section 138 of the N.I.Act, does not warrant any interference by this Court.

6. The amount covered by Ext. P1 cheque is Rs. 5,00,000/-. 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 trial court as confirmed by the appellate court can be modified and reduced to imprisonment till the rising of the court and a fine of Rs. 5,00,000/- to secure the ends of justice. Accordingly, I order so.

In the result, this revision petition stands allowed in part,

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i)confirming the verdict of guilty and sentence 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. 5,00,000/- (Rupees five lakhs only)

iii)in default of payment of fine, the revision petitioner shall undergo simple imprisonment for three 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 time to pay the fine, as requested by the learned counsel for the revision petitioner.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

Ani/

/truecopy/

P.S. ToJudge