

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

Cr1.Rev.Pet.No. 1847 of 2009 ()

JUDGMENT IN CRA 277/2006 OF ADDITIONAL SESSIONS COURT (ADHOC-III),
KASARAGODE DATED 24-04-2009

JUDGMENT IN ST 108/2005 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-
II, HOSDRUG DATED 23-05-2006

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

SATHEESH KUMAR.K., AGED 36 YEARS,
S/O. RAMAN, VIEWNET, ELECTRONICS UDUMA
NEAR AISWARYA TALKIES, P.O. UDUMA,
HOSDURG TALUK.

BY ADV. SRI.C.K.SREEJITH

RESPONDENTS/RESPONDENTS/COMPLAINANTS:

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1. SHEELAVATHI, AGED 48 YEARS,
W/O. SHANTHARAM, RESIDING AT PATTATHANAM
PALLIKKARA II VILLAGE, HOSDURG TALUK.
 2. STATE OF KERALA REP.BY PUBLIC
PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM.

R,R1 BY ADV. SRI.JAWAHAR JOSE
BY PUBLIC PROSECUTOR SRI. R.JITHESH

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

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.1847 of 2009

Dated this the 9th day of October, 2015.

ORDER

The revision petitioner is the accused in S.T.No.108 of 2005 on the files of the court of the Judicial Magistrate of First Class-II, Hosdurg.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced her thereunder to simple imprisonment for six months and to pay an amount of ₹1,00,000/- to the complainant as compensation under Section 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 both sides.

4. The prosecution allegation is that towards the discharge of the liability to 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 as the account was closed by 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 court below, PW1 was examined and Exts.P1 to P5 were marked for the complainant. DW1 was examined and Ext.D1 was marked for the revision petitioner.

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

7. As regards the sentence, the learned counsel for the revision petitioner has pleaded for leniency. The cheque is for an amount of ₹1,00,000/-. 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 courts below can be modified and reduced to imprisonment till the rising of the court and a fine of ₹1,00,000/- 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 Negotiable Instruments Act.

(ii) 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 ₹1,00,000/- (Rupees one lakh 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 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**

Scl.

True Copy

PA to Judge