

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

Cr1.Rev.Pet.No. 2571 of 2005 ()

AGAINST THE JUDGMENT IN CRL.APPEAL 1260/2004 of I ADDL.DISTRICT
JUDGE, ERNAKULAM DATED 11-08-2005

AGAINST THE JUDGMENT IN CC 543/2001 of JUDICIAL FIRST CLASS
MAGISTRATE-II, KOCHI-5 DATED 07-12-2004

REVISION PETITIONER/APPELLANT/ACCUSED:

M.M. ABDUL KHADER,
PROPRIETOR, EAST INDIA TRADING COMPANY
NEAR GOVT. HOSPITAL, KOTHAMANGALAM.

BY ADV. SRI.P.T.JOSE

RESPONDENTS/RESPONDENTS/COMPLAINANT:

1. J.J.ROLLER FLOUR MILLS (P) LTD.,
JAWHAR NAGAR, KADAVANTHRA, KOCHI-20
REP. BY MANAGING DIRECTOR JAISON JAMES.
2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JUSTIN JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 03-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No. 2571 of 2005

Dated this the 3rd day of September, 2015

ORDER

The revision petitioner is the accused in CC No.543/2001 on the files of the court of the Judicial Magistrate of First Class-II, Kochi.

2. The revision petitioner was convicted by the trial court under Section 138 of the N.I Act and sentenced to simple imprisonment for six months and a compensation of Rs.47,000/- to the complainant under Section 357 (3) Cr.PC. The appellate court as per judgment dated 11.08.2005, in Crl.Appeal 1260/2004, dismissed the appeal filed by the revision petitioner against the said conviction and sentence passed by the trial court. Aggrieved by the said conviction and sentence, the accused before the trial court has approached this Court with this revision petition.

3. Heard.

4. The prosecution case is that the revision petitioner purchased goods from the complainant. Towards the discharge of the said liability, 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 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 and PW2 were examined and Exts.P1 to P7 were marked for the complainant. DW1 was examined and Exts. D1 and D2 were marked for the defence. The courts below relying on the documentary and oral evidence adduced by both sides, came to the conclusion 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 hold 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. Now the question to be considered is the quantum of sentence to be awarded to the revision petitioner. The amount covered by Ext.P1 cheque is Rs.46,400/-. 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.47,000/- to meet the ends of justice. Accordingly I order so.

7. In the result, this revision petition stands allowed in part confirming the verdict of guilty and conviction passed by the courts below under Section 138 of the N.I Act. 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.47,000/-(Rupees forty seven thousand only). In default of payment of fine, the revision petitioner shall undergo simple imprisonment for one month. 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.

The learned counsel for the revision petitioner has submitted that the revision petitioner had already deposited the entire amount of Rs.47,000/- before the trial court as per the direction of this Court. Needless to say that if the revision petitioner had already deposited the amount of

Rs.47,000/- before the trial court, as directed by this Court, the revision petitioner need not deposit any further amount before the trial court to comply with the direction of deposit in this order. The 1st respondent shall be at liberty to withdraw the amount deposited by the revision petitioner before the trial court, on filing proper application before the trial court.

Sd/-
B.SUDHEENDRA KUMAR
JUDGE

sm/