

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. 2220 of 2009 ()
CRL.A.896/2006 of ADDITIONAL SESSIONS COURT (FAST TRACK COURT - I),
THIRUVANANTHAPURAM
CC.657/2003 OF JFCM, VARKALA

REVISION PETITIONER/APPELLANT/ACCUSED:

K.P.DIVAKARAN, S/O. KESAVAN,
ASWATHI, LMS JUNCTION, ATTINGAL.

BY ADVS.SRI.R.T.PRADEEP
SRI.V.VIJULAL

RESPONDENTS/STATE AND COMPLAINANT:

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1. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.
 2. S.SAJU,
THIRUVATHIRA, KADAKKAVOOR P.O.

R1 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH
R2 BY ADV. SRI.ANIL KUMAR SREEDHARAN

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

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.2220 of 2009

Dated this the 9th day of October 2015

O R D E R

The revision petitioner is the accused in C.C. No.657 of 2003 on the files of the Court of the Judicial Magistrate of First Class-1, Varkala.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 (“the N.I.Act” for short) and sentenced him thereunder to simple imprisonment for three months and to pay compensation of Rs.75,000/- to the complainant under Sec. 357 (3) Cr.P.C. The appeal filed against the said

conviction and sentence was dismissed by the appellate court. Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

3. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

4. The prosecution allegation is that towards the discharge of the liability of the revision petitioner to the complainant, the revision petitioner issued Ext.P2 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 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 trial court, PW1 and PW2 were examined and Exts.P1 to P8 were marked for the complainant. No evidence was adduced on the side of the defence.

6. The courts below, relying on the documentary as well as oral evidence adduced by the complainant, concurrently found that the accused had executed Ext.P2 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 appreciation of evidence by the courts below was perverse or incorrect. The courts below concurrently found the revision petitioner guilty under Section 138 of the N.I.Act and convicted him thereunder. Having gone through the relevant inputs, I do not find any 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.

7. The cheque is for Rs.75,000/-. Considering the facts and circumstances of the case, including the amount covered by Ext.P2 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.75,000/- 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 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.75,000/- (Rs. Seventy five thousand 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 the fine

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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**

dl

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PA to Judge