

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

Crl.Rev.Pet.No. 1936 of 2012 ()

CRA 422/2011 of I ADDL.S.C., PALAKKAD
ST 1342/2009 of J.M.F.C.-I, PALAKKAD

REVISION PETITIONER/REVISION PETITIONER/APPELLANT/ACCUSED:

N.K.MOHANDAS,
S/O. LATE KESAVAN, NELLIPARAMBILVEEDU, PERUMKULANGARA
KOTTAYI.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS/COMPLAINANT AND STATE:

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1. A.MURALEEDHARAN
S/O. AYYAPPAN, ERAPPAKOTTILVEEDU, ALAMPALLAM
KALLEPPULLY.P.O., PALAKKAD - 678 002.
 2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R1 BY ADV. SRI.K.P.BALAGOPAL
R2 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 15-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1936 of 2012

Dated this the 15th day of October 2015

O R D E R

The revision petitioner is the accused in S.T. No.1342 of 2009 on the files of the court of the Judicial Magistrate of First Class -1, Palakkad.

2. The trial court convicted the revision petitioner under Section 138 of the N.I. Act and sentenced him thereunder to simple imprisonment for 3 months and a compensation of Rs.1,90,000/- to the complainant under Section 357(3) Cr.P.C. In the appeal, the conviction was confirmed and the sentence was modified and reduced to imprisonment till the rising of the court and a

compensation of Rs.2,00,000/-. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard both sides.

4. The prosecution allegation is that the revision petitioner borrowed an amount of Rs.1,90,000/- 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 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 was examined and Exts.P1 to P6 were marked for the prosecution. No evidence was adduced by the revision petitioner.

6. The learned counsel for the revision petitioner has argued that eventhough the revision petitioner had taken a contention that he entrusted three signed blank cheques with his friend in connection with the bidding of a kuri and one of the said cheques had been mis-utilised by the complainant to file the present complaint, the courts below did not consider the said aspect and in the said circumstances, the judgments of the courts below cannot be sustained. Eventhough the revision petitioner had

contended that he had subscribed a kuri conducted by one of his friends, the revision petitioner did not even state about the name of the friend who had conducted the said kuri. It appears that the revision petitioner had made the said suggestion during the cross-examination of PW1, which was denied by PW1. Having gone through the judgments of the courts below, I am satisfied that the courts below had considered the said aspect and repelled the same as there was no material before the court to substantiate the said contention by the yardstick of preponderance of probabilities and possibilities.

7. The learned counsel for the revision petitioner has further argued that even though PW1 had admitted that a promissory note was executed by the revision petitioner at

the time of receiving the amount, the said promissory note was not produced before the Court and in the said circumstances, it has to be held that the complainant had withheld the genesis of the case and consequently, the revision petitioner is entitled to the benefit of doubt. It is borne out from the materials that the complainant had a contention that at the time of borrowing the amount, the revision petitioner executed a promissory note. However, since the revision petitioner failed to repay the amount, the complainant demanded the amount and at that time, the revision petitioner issued Ext.P1 cheque. At the time of issuing Ext.P1 cheque, the revision petitioner received back the promissory note from the complainant. In view of the above evidence of PW1, the non-production of the

promissory note does not have any significance.

8. In this case, the courts below, relying on the documentary as well as oral evidence adduced by the complainant, 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 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.

9. As regards the sentence, the learned counsel for the revision petitioner has pleaded for leniency. The cheque is for Rs.1,90,000/-, Considering the facts and circumstances of the case, 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.1,90,000/- 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.1,90,000/- (Rs. One lakh ninety thousand only)
- (iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for 45 days.
- (iv) 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.P.C.

The revision petitioner is granted six months to pay
the fine, as requested by the learned counsel.

Sd/

**B.SUDHEENDRA KUMAR,
JUDGE**

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PA to Judge

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