

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

Crl.Rev.Pet.No. 2679 of 2009 ()

AGAINST THE JUDGMENT IN CRA 235/2008 of ADDL.SESIONS
COURT (ADHOC)-II, ALAPPUZHA DATED 21-03-2009

AGAINST THE JUDGMENT IN CC 272/2006 of J.M.F.C., RAMANKARI
DATED 21-04-2008

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

JACOB GEORGE, PLAPARAMBIL HOUSE,
VADAVATHUR P.O., KOTTAYAM.

BY ADV. SRI.P.S.KRISHNA PILLAI

RESPONDENT(S)/RESPONDENTS/STATE AND COMPLAINANT:

1. STATE OF KERALA
REP.BY THE DIRECTOR GENERAL OF PROSECUTIONS
HIGH COURT OF KERALA, ERNAKULAM.

2. LALICHAN VARGHESE, SRAMBICKAL VEEDU,
RAMANKARY P.O., KUTTANAD TALUK, ALAPPUZHA DISTRICT.

BY PUBLIC PROSECUTOR SRI.V.S. SREEJITH
FOR R2 ADV. SRI.G.SUKUMARA MENON

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 30-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
Crl.R.P. No. 2679 of 2009
.....

Dated this the 30th day of October, 2015

ORDER

The revision petitioner is the accused in C.C. No. 272 of 2006 on the files of the court of the Judicial Magistrate of First Class, Ramankari.

2. The trial Court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881, and sentenced him thereunder to simple imprisonment for three months and to pay compensation of Rs. Rs.30,000/- to the complainant 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 the revision petitioner issued Ext. P1 cheque towards the discharge of the liability of the

revision petitioner to 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 pay the cheque amount within the statutory period or thereafter.

5. Before the trial court, PW1 was examined and Exts. P1 to P16 were marked for the complainant. DW1 was examined and Exts.D1 and D4 were marked for the revision petitioner.

6. After evaluating the oral and documentary evidence adduced by the parties, the courts below 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 Sec. 138 of the N.I.Act does not warrant any interference by this Court.

7. Ext. P1 cheque is for Rs. 30,000/-. Considering the facts and circumstances, 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. 30,000/- (Rupees thirty thousand only) to secure the ends of justice and 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

Sec. 138 of the N.I.Act.

ii) the sentence awarded by the courts below stands modified and reduced to imprisonment till the rising of the court and a fine of Rs. 30,000/- (Rupees thirty thousand only) .

iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for one month

iv) in the event of realisation of the fine amount, the entire amount shall be given as compensation to the complainant under Sec. 357 (1) (b) Cr.P.C.

The revision petitioner is granted six months to pay the amount of compensation.

Dated this the 30th day of October, 2015.

B. SUDHEENDRA KUMAR, JUDGE .

ani/2-10-2015.