

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

Crl.Rev.Pet.No. 2947 of 2009 ()

Crl.A 110/2009 of ADDL.DISTRICT & SESSIONS COURT (ADHOC-III),NORTH PARAVUR
ST 3918/2003 of J.M.F.C. - II, NORTH PARAVUR

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

T.J.JOSEPH,S/O.YOHANNAN,
THACHIL HOUSE, NORTH KUTHIYATHODU P.O.
PUTHENVELIKKARA VILLAGE, PARAVUR TALUK.

BY ADV. SRI.C.ANILKUMAR (KALLESSERIL)

RESPONDENTS/COMPLAINANT & STATE:

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1. T.J.FRANCIS,S/O.YOHANNAN,
THACHIL HOUSE, NORTH KITHIYATHODU P.O.
PUTHENVELIKKARA VILLAGE, NORTH PARAVUR TALUK.
 2. STATE OF KERALA,
REP.BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R2 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
18-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.2947 of 2009

Dated this the 18th day of November 2015

O R D E R

The accused in S.T. No.3918 of 2003 on the files of the Court of the Judicial Magistrate of First Class-II, North Paravur, has filed this revision petition challenging the concurrent finding of conviction and sentence passed by the courts below under Section 138 of the Negotiable Instruments Act (for short 'N.I. Act.')

2. Heard.

3. The prosecution allegation is that the revision petitioner issued Ext.P1 and P2 cheques in favour of the complainant towards the discharge of the liability of the

revision petitioner to the complainant. The complainant presented the said cheques 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 returned as “unclaimed” as the revision petitioner refused to accept the same even after getting the intimation from the postal authorities. However, the revision petitioner did not make payment of the cheque amount within the statutory period or thereafter.

4. Before the trial court, PW1 and PW2 were examined and Exts.P1 to P9 were marked for the complainant. No evidence was adduced on the side of the revision petitioner.

5. The courts below, relying on the documentary as well as the oral evidence adduced by the complainant, concurrently found that the revision petitioner executed Exts.P1 and P2 cheques as contemplated under Section 138 of the 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. No circumstance has been brought to my notice to indicate that the appreciation of evidence by the courts below was 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 the N.I. Act, does not warrant any interference by this Court.

6. Considering the facts and circumstances of the

case, including the amount covered by Exts.P1 and P2 cheques, 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.2,50,000/- 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.2,50,000/- (Rupees two lakh fifty thousand only)

(iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for three months.

(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 four months to pay the fine.

Sd/
B.SUDHEENDRA KUMAR,
JUDGE

dl/20.11.2015

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PA to Judge