

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 371 of 2011 ()

AGAINST THE JUDGMENT IN CRA 236/2009 of D.C. & SESSIONS COURT, KOLLAM
DATED 25-11-2010

AGAINST THE JUDGMENT IN ST 68/2008 of JUDICIAL FIRST CLASS MAGISTRATE COURT-
IV, KOLLAM DATED 07-07-2009

PETITIONER/(APPELLANT-ACCUSED):

BUHARI, AGED 39, S/O.SHAMSUDEEN
RESIDING AT BEENA MANZIL, THEKKUMBHAGOM, PARAVUR
KOLLAM.

BY ADV. SRI.HARISH GOPINATH

RESPONDENTS/(RESPONDENTS-STATE & COMPLAINANT):

1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031.
2. SATHYANANDAN, AGED 53, S/O., KOCHURAMAN,
RESIDING AT SUVAMANILAYAM, ASRAMAM, KOLLAM
REPRESENTED POWER OF ATTORNEY HOLDER T.S.SHAJAN
AGED 28, S/O.SREENIVAS, PERUMPUZHA POST
KERALAPURAM, KOLLAM DISTRICT, PIN- 691504

R2 BY ADV.SRI.M.T.SURESHKUMAR
R1 BY PUBLIC PROSECUTOR SRI.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
04-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

AV

B. SUDHEENDRA KUMAR, J.

Crl.R.P.No.371 of 2011

Dated this the 4th day of December, 2015.

ORDER

The accused in S.T.No.68 of 2008 on the files of the Court of the Judicial Magistrate of First Class-IV, Kollam 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 ('N.I.Act' for short).

2. The prosecution allegation is that the revision petitioner executed Ext.P1 cheque in favour of the complainant towards the discharge of the liability of the revision petitioner to the complainant. The said cheque was dishonoured due to insufficiency of funds in the account of the revision petitioner, when presented for encashment. Statutory notice was received by the revision petitioner.

3. Before the trial court, PW1 was examined and Exts.P1 to P7 were marked for the complainant. DW1 and DW2 were examined and Exts.D1 and D2 were marked for the revision petitioner.

4. The courts below after appreciating the oral and documentary evidence adduced by the parties, concurrently found that the revision petitioner executed Ext.P1 cheque as contemplated under Section 138 of the N.I. Act, repelling the contentions of the revision petitioner. No circumstance has been brought to my notice

to indicate that the appreciation of evidence or the concurrent finding by the courts below is perverse or incorrect. In such circumstance, 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.

5. The amount covered by Ext.P1 cheque is Rs.1,00,000/-. Considering the facts and circumstance 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.1,00,000/- (Rupees One lakh only) to meet the ends of justice and accordingly, I order so. In default of payment of fine, the revision petitioner shall undergo simple imprisonment for a period of one month. In the event of realisation of the fine, the entire amount shall be given to the complainant under Section 357(1)(b) Cr.P.C.

In the result, this revision petition stands allowed in part as above.

Sd/-
B. SUDHEENDRA KUMAR,
JUDGE