

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

Crl.Rev.Pet.No. 3023 of 2009 ()

AGAINST THE JUDGMENT IN CRA 608/2007 of III ADDL. SESSIONS
JUDGE, ERNAKULAM DATED 21-02-2009

AGAINST THE JUDGMENT IN CC 530/2002 of J.M.F.C.-II,
ERNAKULAM DATED 20-08-2007

REVISION PETITIONER(S)/RESPONDENT/COMPLAINANT:

JOHN P.P., AGED 35 YEARS, S/O.POULOSE,
PANACKAL HOUSE, PACHALAM P.O., ERNAKULAM
COCHIN - 682 012.

BY ADVS.SRI.V.SANTHARAM
SRI.ANTO THOMAS

RESPONDENT(S)/APPELLANT AND ACCUSED:

1. PUSHPA BABU, AGED 46 YEARS,
W/O.LATE JAGADEESH BABU, PULIZHANEZHATHU, HOUSE
C-8-767, NEAR ANTONY PANACKAL ELECTRICALS
BMC JUNCTION, SOUTH CHITTOOR, KOCHI-27.

2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.T.K.SHAJAHAN
FOR R2 BY PUBLIC PROSECUTOR SRI. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 12-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
Crl. R.P. No. 3023 of 2009
.....

Dated this the 12th day of October, 2015

ORDER

This Revision Petition has been filed by the Complainant in C.C. No. 530 of 2002 on the files of the Court of the Judicial Magistrate of the First Class- II, Ernakulam, challenging the inadequacy of the compensation ordered by the appellate court.

2. The trial Court convicted the accused under Section 138 of the N.I.Act and sentenced him to simple imprisonment for six months and to pay a compensation of Rs. 81,000/- to the complainant under Section 357 (3) Cr.P.C. In the appeal filed against the said conviction and sentence, the conviction was confirmed and the sentence was modified and reduced to imprisonment till the rising of the court and a fine of Rs. 20,000/- with a default clause for simple imprisonment for two months.

3. Heard both sides.

4. The prosecution allegation is that the accused borrowed an amount of Rs. 75,000/- from the complainant and towards the discharge of the said liability, the accused 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 accused. Statutory notice was issued on behalf of the complainant which was received by the accused. However, the accused did not pay the cheque amount within the statutory period or thereafter.

5. Before the court below, PW1 was examined and Exts. P1 to P7 were marked for the prosecution. DW1 and DW2 were examined on the side of the defence.

6. The learned counsel for the revision petitioner has argued that eventhough the appellate court confirmed the conviction of the revision petitioner under Sec. 138 of the N.I. Act, the sentence was modified to imprisonment till the rising of the court and a fine of Rs. 20,000/-, which is patently illegal and

in the said circumstances, the sentence awarded by the appellate court cannot be sustained.

7. The cheque is for an amount of Rs. 75,000/-. No specific reason has been stated by the appellate court to reduce the fine to Rs. 20,000/- and that itself, without having any substantive term of imprisonment. Considering the facts and circumstances of the case, including the amount covered by Ext. P1 cheque, I am of the view that the sentence awarded by the appellate court cannot be said to be legal, proper and correct. The above view is supported by the decision of the Apex Court in *Vijayan R. v. Baby and Another* [2011(4) KHC 276] = [AIR 2012 SC 528]. In the said decision, the Apex Court held that in order to bring uniformity in proceedings, the courts should unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine upto twice the cheque amount and direct payment of the said amount as compensation. In view of the above reason, the sentence awarded by the appellate court is not sustainable. Consequently, I set aside the

same.

8. In the result, this revision petition stands allowed setting aside the sentence awarded by the appellate court and the matter is remitted to the appellate court for awarding sentence afresh, in accordance with law, in the light of the decision of the Apex Court cited supra, affording reasonable opportunity to both sides of being heard. I make it clear that the conviction passed by the appellate court is not interfered with.

The parties shall appear before the appellate court through pleader on 5-11-2015.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. To Judge