

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

Crl.Rev.Pet.No. 163 of 2013 ()

Crl.A 646/2010 of ADDITIONAL SESSIONS COURT, PALAKKAD
CC 33/2009 of J.M.F.C., PATTAMBI

REVISION PETITIONER(APPELLANT/ACCUSED):

V.A. ABDUL LATHEEF,
S/O AHAMMED, VARIKKADAN VEEDU PALLIPARAKARA
PALLIKAVALAYIL. MARAMBILLI VILLAGE.
KUNNATHUNADU TALUK, MUDICKAL P.O, PERUMBAVOOR

BY ADVS.SRI.S.VINOD BHAT
SRI.LEGITH T.KOTTAKKAL

RESPONDENTS/RESPONDENTS/COMPLAINANT/A PROPER PARTY:

1. SHAJITHA,
W/O ABDULSAHTAR, CHERIYATHUVALAPPIL VEEDU
KUMARANELLUR AMSOM, DEOSM, KUMARANALLUR 679552

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COUR TOF KERALA, ERNAKULAM

R1 BY ADV. SRI.SANTHEEP ANKARATH
R1 BY ADV. SRI.ARUN MATHEW VADAKKAN
R2 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
09-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.163 of 2013

Dated this the 9th day of November 2015

O R D E R

The revision petitioner is the accused in C.C.No.33 of 2009 on the files of the Court of the Judicial Magistrate of First Class, Pattambi.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 (“the N.I.Act” for short) and sentenced him thereunder to simple imprisonment for six months and to pay a compensation of Rs.15,00,000/- to the complainant under Sec. 357 (3) Cr.P.C. In the appeal, the conviction was confirmed and the sentence was modified and reduced to

simple imprisonment for three months and a compensation of Rs.20,73,750/- to the complainant under Section 357(3) Cr.P.C. Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

3. Heard.

4. The prosecution allegation is that the revision petitioner issued Ext.P1 cheque in favour of the complainant towards the discharge of the liability in connection with an agreement for sale executed by the revision petitioner and the complainant in respect of the property of the revision petitioner. 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 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.

6. 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. 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 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.

7. The cheque is for Rs. 15,00,000/-. 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 courts below can be modified and reduced to imprisonment till the rising of the court and a fine of Rs.15,00,000/- 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.15,00,000/-(Rupees fifteen lakhs 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 six months to pay the fine amount. Needless to state that the amount, if any, deposited by the revision petitioner in connection with this case, will be treated as part payment of the fine ordered by this Court. The first respondent shall be at liberty to withdraw the amount, if any, deposited by the revision petitioner in this case.

Sd/-

**B.SUDHEENDRA KUMAR,
JUDGE**

dl/9.11.2015

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PA to Judge