

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

Crl.Rev.Pet.No. 3232 of 2009 ()

AGAINST THE JUDGMENT IN CRL.A. 748/2007 of II ADDL.
SESSIONS JUDGE, THIRUVANANTHAPURAM DATED 24-08-2009

AGAINST THE JUDGMENT IN CC 28/2007 of J.M.F.C.-V,
NEYYATTINKARA DATED 18-08-2007

REVISION PETITIONER(S):

P. STANLEY JOHN,
STANLEY MULTI SPECIALITY HOSPITAL, UDIYANKULANGARA
NEYYATTINKARA TALUK, THIRUVANANTHAPURAM.

BY ADVS.SRI.L.MOHANAN
SMT.LIGEY ANTONY

RESPONDENT(S):

1. STATE OF KERALA - REPRESENTED
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, KOCHI-31

2. K. CHANDRA KUMAR, KOIKKAL THOTTU
VEEDU, ARUMANOOR POST, NEYYATTINKARA
THIRUVANANTHAPURAM.

FOR R1 PUBLIC PROSECUTOR SRI. R. GITHESH
R2 BY ADV. SRI.K.JAYAPRASAD

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 20-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
Crl.R.P. No. 3232 of 2009
.....

Dated this the 20th day of November, 2015

ORDER

The accused in C.C. No. 28 of 2007 on the files of the Court of the Judicial Magistrate of First Class, Neyyattinkara, has filed this revision petition challenging the concurrent finding of conviction and sentence passed by the courts below under Section 138 of the NIAct.

2. Heard.

3. The prosecution allegation is that towards the discharge of the liability of the revision petitioner to the complainant, the revision petitioner executed 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 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.

4. Before the trial Court, PW1 was examined and Exts. P1

to P6 were marked for the prosecution. DW1 was examined on the side of the revision petitioner.

5. The courts below, after evaluating 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 and committed the offence under Section 138 of the N.I. Act. Since there is concurrent finding by the courts below, this Court will not interfere with the same as no material is available before the court 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 Section 138 of the N.I. Act, does not warrant any interference by this Court.

6. The amount covered by Ext P1 cheque is Rs. 50,000/-. 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. 50,000/-, (Rupees fifty thousand only) to meet the ends of justice.

7. 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. 50,000/- (Rupees fifty 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 to the complainant as compensation under Section 357 (1)(b) Cr.P.C.

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

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. to Judge