

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

Cr1.Rev.Pet.No. 344 of 2013 ()

AGAINST THE JUDGMENT IN CRA 322/2010 of I ADDL. SESSIONS
JUDGE, KOLLAM DATED 16-10-2012

AGAINST THE JUDGMENT IN ST 66/2009 of J.M.F.C. - III,
KOLLAM DATED 09-07-2010

REVISION PETITIONER(S)/PETITIONER/APPELLANT/ACCUSED:

N.ASOKAN
S/O. CINE NARAYANAN, KAMALA NIVAS, THAMARAKKULAM
KOLLAM-1.

BY ADVS.SRI.S.SOMAN
SRI.R.SELVAKUMAR

RESPONDENT(S)/RESPONDENT/STATE/COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031

2. K.NAGENDRAN PARADISE LRA NO. 134
LEKSHMI NADA, KOLLAM.- 691 001

R2 BY ADV. SRI.C.RAJENDRAN
BY PUBLIC PROSECUTOR SRI. GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 17-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
Crl.R.P. No. 344 of 2013
.....

Dated this the 17th day of September, 2015

ORDER

The revision petitioner is the accused in ST. No. 66 of 2009 on the files of the Court of the Judicial Magistrate of First Class-III, Kollam.

2. The revision petitioner was convicted by the trial court 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 compensation of Rs. 95,000/- to the complainant under Section 357 (3) Cr.P.C with a default clause for simple imprisonment for three months. The appellate court as per judgment dated 16-10-2012 in Crl.Appeal No. 322 of 2010 confirmed the conviction and modified the sentence to imprisonment till the rising of the court and a compensation of Rs. 1,00,000/- to the complainant under Section 357 (3) Cr.P.C.

3. Heard both sides.

3. The prosecution case is that the revision petitioner borrowed an amount of 95,000/- from the complainant and towards the discharge of the said liability, the revision petitioner 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 accounts 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.

4. Before the trial court PW1 was examined and Exts. P1 to P5 were marked for the complainant. No evidence was adduced on the side of the defence.

5. The court below, after evaluating the oral and documentary evidence adduced by the complainant, entered into a finding that the revision petitioner had executed Ext. P1 cheque as contemplated under Section 138 of the NI Act. The defence set up by the revision petitioner was also repelled by the courts below. Since there is concurrent finding on facts by the courts below, 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 finding of the courts below that the revision petitioner committed the offence does not warrant any interference by this Court.

6. The cheque is for Rs. 95,000/-. 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 a fine of Rs. 95,000/- to secure the ends of justice and accordingly, I order so.

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

i) confirming the verdict of guilty and conviction passed by the trial court 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 a fine of Rs. 95,000/- (Rupees ninety five thousand only)

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

8. The revision petitioner is granted six months' time to make payment of the amount of fine ordered by this Court.

If the revision petitioner had already deposited any amount pursuant to the order of this Court or the appellate court, that amount will be treated as part of the fine amount ordered by this Court.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. to Judge