

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

Crl.Rev.Pet.No. 3262 of 2009 ()

AGAINST THE JUDGMENT IN CRA 30/2008 of ADDL.DISTRICT COURT
(ADHOC-I), KOTTAYAM DATED 24TH JUNE 2009

AGAINST THE JUDGMENT IN CC 1103/2003 of JUDL.MAGISTRATE OF
FIRST CLASS-III, KOTTAYAM DATED 17-12-2007

REVISION PETITIONER(S):

ANILKUMAR, S/O. SRIDHARAN, AGED 50 YEARS
PUTHENPARAMBIL HOUSE, PERUMBANCACHY P.O.
MADAPPILLY VILLAGE, CHANGANACHERRY, KOTTAYAM.

BY ADV. SRI.NIREESH MATHEW

RESPONDENT(S):

1. LEKHA RAGHUNATHAN
MAMBALATHU HOUSE, T.B.ROAD, KOTTAYAM.

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

R1 BY ADV. SRI.LIJI.J.VADAKEDOM

R2 BY PUBLIC PROSECUTOR SRI. GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 14-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Crl.R.P. No. 3262 of 2009
.....

Dated this the 14th day of September, 2015

ORDER

The revision petitioner is the accused in C.C. No. 1103 of 2003 on the files of the Court of the Judicial Magistrate of First Class – III, Kottayam.

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 one year and a fine of Rs. 5,00,000/- with a default clause for simple imprisonment for six months. The appeal filed against the said conviction and sentence was dismissed by the Sessions Court, Kottayam as per judgment in Crl. Appeal 30 of 2008. Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

3. Heard both sides.

4. The prosecution allegation is that in order to discharge the liability towards the complainant, 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 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 court below, PW1 to PW3 were examined and Exts. P1 to P26 were marked for the complainant. DW1 and DW2 were examined and Exts. D1 to D4 were marked for the defence.

6. The courts below, relying on the documentary as well as oral evidence adduced by the complainant, concurrently found that the revision petitioner had 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. In the said circumstances, the concurrent finding of the courts below that the revision petitioner committed the offence does not warrant interference by this Court.

7. As regards the sentence, the learned counsel for the revision petitioner pleaded for leniency. It appears that the cheque is for Rs. 5,00,000/- 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.5,00,000/- to secure the ends of justice and 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.5,00,000/- (Rupees five lakhs only)

- (iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for four 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.
- (v) the revision petitioner is granted six months time to make payment of the amount of fine ordered by this Court.

I make it clear that the payment which will be made directly will be treated as sufficient compliance of the direction of payment of fine in this order, provided the receipt in this regard shall be produced before the trial Court.

B. SUDHEENDRA KUMAR,
JUDGE.

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