

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 3357 of 2009 ()

CRL.A 1056/2007 of II ADDL.S.C.,THIRUVANANTHAPURAM
ST 833/2006 of J.M.F.C.-X, THIRUVANANTHAPURAM

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

ASHOK KUMAR.S, PADINJATTIL HOUSE,
POURNAMI NAGAR, NO.47, 3RD STREET
KALLATTUMUKKU, KAMALESWARAM, THIRUVANANTHAPURAM.

BY ADV. SRI.D.KISHORE

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

1. MOHAN XAVIER CARDOZ,
ANANTHA JYOTHI GOLD EMPORIUM, G-2
SAPHALYAM SHOPPING COMPLEX, PALAYAM
THIRUVANANTHAPURAM.

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

R-1 BY ADV. SRI.SANTHEEP ANKARATH
R-1 BY ADV. SRI.SUMODH MADHAVAN NAIR
R2 BY BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
01-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.3357 of 2009

Dated this the 1st day of December 2015

O R D E R

The accused in S.T.No.833 of 2006 on the files of the Court of the Judicial Magistrate of First Class - X, Thiruvananthapuram has filed this revision petition challenging the concurrent finding of conviction and sentence passed by the courts below under Section 138 of the Negotiable Instruments Act (for short 'the N.I. Act).

2. Heard.

3. The prosecution allegation is that the revision petitioner executed Ext.P1 cheque in favour of the complainant towards the discharge of his liability to the

complainant. The said cheque was dishonoured due to insufficiency of funds in the account of the revision petitioner when presented for encashment. Statutory notice was issued to the revision petitioner, which was returned as 'unclaimed' as the revision petitioner did not accept the same even after the receipt of intimation from the postal authorities.

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 revision petitioner.

5. The learned counsel for the revision petitioner has submitted that the complainant did not prove the

transaction between the complainant and the revision petitioner leading to the issuance of Exts.P1cheque. The evidence of PW1 would clearly show that the revision petitioner borrowed an amount of Rs.80,000/- from the complainant and towards the discharge of the said liability, the revision petitioner issued Ext.P1 cheque in favour of the complainant.

6. The Apex Court in **Vasanthakumar T. v. Vijayakumari** (2015 KHC 4332) held in paragraph 10 thus:-

“ Therefore, in the present case since the cheque as well as the signature has been accepted by the accused respondent, the presumption under Section 139 would operate. Thus, the burden was on the accused to disprove the cheque or the existence of any legally recoverable debt or liability.”

7. In this case, the cheque as well as the signature had been accepted by the revision petitioner. In the said circumstances, the argument in this regard advanced by the learned counsel for the revision petitioner cannot be accepted.

8. In this case, the courts below correctly evaluated the oral and documentary evidence adduced by the complainant and 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., repelling the contentions of the revision petitioner. No circumstance 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.

9. The cheque is for Rs.80,000/-. 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.80,000/- 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

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below under Section 138 of the N.I. Act stands modified and reduced to a fine of Rs.80,000/-(Rupees eighty 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.,

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

Sd/-
B.SUDHEENDRA KUMAR,
JUDGE

dl/2.12.15

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PA to Judge