

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

Crl.Rev.Pet.No. 196 of 2015 ()

CRA 203/2014 of II ADDL.SESIONS COURT,ERNAKULAM
CC 267/2009 of J.M.F.C. - II, PERUMBAVOOR

REVISION PETITIONER/APPELLANT:

K.MURALEEDHARAN, AGED 62 YEARS
S/O. LATE KUTTY, PULIMOOTTIL HOUSE, MEZHUVELIKKARA
MEZHUVELI P.O., PATHANAMTHITTA

BY ADVS.SRI.ANOOP JOSEPH
SMT.K.K.DAJULA
SMT.DEVI P. PRATHAPAN

RESPONDENTS/RESPONDENTS:

1. SUDARSAN
S/O. DHASKARA PILAI, KANJIRAKOOTTIL HOUSE
MUDAKKUZHA P.O., ERNAKULAM DISTRICT.
2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

R2 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 17-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.196 of 2015

Dated this the 17th day of September 2015

ORDER

The revision petitioner is the accused in C.C.No. 267 of 2009 on the files of the court of the Judicial Magistrate of First Class-II, Perumbavoor.

2. The trial court convicted the revision petitioner under Section 138 of the N.I.Act and sentenced him thereunder to simple imprisonment for three months and to pay a compensation of Rs.1,40,000/- to the complainant under Section 138 of the N.I. Act. In the appeal filed against the said conviction and sentence, the appellate

court confirmed the conviction and modified the sentence to simple imprisonment for one month and to pay a compensation of Rs.70,000/- 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 the learned counsel for the petitioner and the learned public prosecutor.

4. The prosecution allegation is that the revision petitioner borrowed an amount of Rs.70,000/- from the complainant and towards the discharge of the said liability, the revision petitioner issued Ext.P1 cheque in favour of the complainant. The said cheque was presented 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 was examined and Exts.P1 to P5 were marked for the complainant. The revision petitioner himself got examined as DW1.

6. The courts below, after evaluating the oral and documentary 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. The defence set up by the revision petitioner was 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 finding of the courts below was perverse or incorrect. The courts below concurrently 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 finding of the courts below .

7. As regards the sentence, the learned counsel for the revision petitioner has pleaded for leniency. The cheque amount is Rs.70,000/-. 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.70,000/-to secure the ends of justice. Accordingly, I order so.

In this result, this revision petition stands allowed in part,

- (1) confirming the verdict of guilty and conviction passed by the courts below under Section 138 of N.I.Act.
- (2) 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 Rs70,000/-
- (3) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for one month.

(4) 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.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

dl

/ True copy /

PA to Judge