

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1419 of 2010 ()

AGAINST THE JUDGMENT IN CRL.A.8/2009 of SESSIONS
COURT, KASARAGOD DATED 11-03-2010
AGAINST THE JUDGMENT IN CC 325/2008 of J.M.F.C.-II,
(ADDITIONAL MUNSIF) KASARAGOD DATED 28-11-2008

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

C.A.MOHAMMED, PROPRIETOR,
BLUE MARTINE BOTTLING COMPANY, ULIYATHDKA,
MADHUR POST
KASARAGOD.

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENT(S)/COMPLAINANT/STATE:

1. M.MAMATHA, AGED 37 YEARS,
S/O.AITHAPPA NAIK, REPRESENTED BY THE POWER OF
ATTORNEY HOLDER SRI.AITHAPPA NAIK, AGED 63 YEARS
S/O.NARNU NAIK, R/AT. (BOTH ARE) DOOR NO.10/63
MUNGILAPADAVU, UKKINADKA POST, PARLA
KASARAGOD

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

R1 BY ADVS.N/S. SRI.T.SETHUMADHAVAN
& SRI.PUSHPARAJAN KODOTH
R2 BY PUBLIC PROSECUTOR SRI.V.S. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 30-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
Crl.R.P. No. 1419 of 2010
.....

Dated this the 30th day of October, 2015

ORDER

The revision petitioner is the accused in C.C. No. 325 of 2008 on the files of the court of the Judicial Magistrate of First Class, (Addl. Munsiff), Kasaragod.

2. The trial Court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to simple imprisonment for three months and to pay compensation of Rs. Rs.5,00,000/- to the complainant under Section 357 (3) Cr.P.C. In the appeal, the conviction was confirmed and the sentence was modified and reduced to simple imprisonment for ten days and a compensation of Rs. 5,00,000/- under Section 357 (3) Cr.P.C. with a default clause for simple imprisonment for one month. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard both sides.

4. The prosecution allegation is that the revision petitioner issued Ext. P1 cheque towards the discharge of the liability of the revision petitioner to 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.

5. Before the trial court, PW1 was examined and Exts. P1 to P8 were marked for the complainant. Ext.D1 was marked for the revision petitioner.

6. After evaluating the oral and documentary evidence adduced by the parties, the courts below 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 also repelled by the courts

below. 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 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 Sec. 138 of the N.I.Act does not warrant any interference by this Court.

7. Ext. P1 cheque is for an amount of Rs. 5,00,000/-. Considering the facts and circumstances, 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/- (Rupees five lakhs only) 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 Sec. 138 of the N.I.Act.

ii) the sentence awarded by the courts below 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 three months.

iv) in the event of realisation of the fine amount, the entire amount shall be given as compensation to the complainant under Sec. 357 (1) (b) Cr.P.C.

The revision petitioner is granted six month to pay the fine.

Dated this the 30th day of October, 2015.

Sd/-B. SUDHEENDRA KUMAR, JUDGE.

Ani/2-10-2015.

/truecopy/

P.S. To Judge