

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

Cr1.Rev.Pet.No. 3504 of 2009 ()

JUDGMENT IN CRA 66/2008 OF ADDL.SESIONS COURT (ADHOC), MAVELIKKARA

JUDGMENT IN CC 803/2005 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
MAVELIKKARA

REVISION PETITIONER/APPELLANT/ACCUSED:

K.A.VARGHESE,VADAKKE VEEDU, PUTHIYAKAVU,
MAVELIKKARA.

BY ADVS.SRI.RINNY STEPHEN CHAMAPARAMPIL
SMT.ASHA ELIZABETH MATHEW

RESPONDENT(S)/RESPONDENT/COMPLAINANT & STATE:

1. VARGHESE DANIEL, PUTHEN VEEDU,
KOTTARKAVU, MAVELIKKARA.
2. STATE OF KERALA, REP.BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R, BY PUBLIC PROSECUTOR SRI.R.GITESH
R,R1 BY ADV. SRI.A.SHAFEEK (KAYAMKULAM)

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 02-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.3504 of 2009

Dated this the 2nd day of November, 2015

ORDER

The revision petitioner is the accused in C.C. No.803 of 2005 on the files of the Court of the Judicial Magistrate of First Class, Mavelikara.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him thereunder to simple imprisonment for two years and to pay a compensation of ₹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 three months and to pay a compensation of ₹5,00,000/- 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 both sides.

4. The prosecution case is that towards the discharge

of the liability to 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 as the account was closed by the revision petitioner. There was no sufficient fund in the account of the revision petitioner to honour the cheque. Statutory notice was issued on behalf of the complainant to the revision petitioner, 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 and PW2 were examined and Exts.P1 to P6 were marked for the complainant. Exts.X1 and X2 were also marked for the complainant. No evidence was adduced on the side of the revision petitioner.

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 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 Section 138 of N.I Act does not warrant any interference by this court.

7. As regards the sentence, the learned counsel for the revision petitioner has pleaded for leniency. The learned counsel for the first respondent has fairly conceded that if the compensation amount awarded by the appellate court is sustained, he has no objection in setting aside the sentence of imprisonment passed by the appellate court.

Considering the facts and circumstances of the case, including the submission of the learned counsel for the first

respondent, I am of the view that the sentence awarded by the appellate court can be modified and reduced to imprisonment till the rising of the court and a fine of ₹5,00,000/- to meet 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 Negotiable Instruments Act.

(ii) the sentence awarded by the courts below under Section 138 of the Negotiable Instruments Act stands modified and reduced to imprisonment till the rising of the court and a fine of ₹5,00,000/- (Rupees five lakhs 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 fine, the

entire amount shall be given to the complainant as compensation under Section 357 (1) (b) Cr.P.C.

The revision petitioner is granted six months to pay the fine. Needless to state that the payment which may be directly made to the complainant, will be treated as sufficient compliance of payment of fine in this order, provided the complainant files an affidavit in this regard before the trial court.

Sd/-
B. SUDHEENDRA KUMAR
JUDGE

ScI/2.11.2015

True Copy

PA to Judge