

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

Crl.Rev.Pet.No. 374 of 2015 ()

CRA 238/2012 of ADDL. SESSIONS COURT - VI, KOLLAM
CC 1156/2007 of J.M.F.C.-I, KOLLAM

REVISION PETITIONER/APPELLANT/ACCUSED:

L.VIJAYAN, AGED 51 YEARS
S/O.LAMBODHARAN, DRIVER, RUBBER BOARD REGIONAL OFFICE
NEDUMANGADU, THIRUVANANTHAPURAM
RESIDING AT SREEBHARATHA, T.C.43/611, ARA-61
KAMALESWARAMCHERRY, MUTTATHARA VILLAGE
THIRUVANANTHAPURAM.

BY ADV. SRI.D.AJITHKUMAR

RESPONDENTS/RESPONDENTS/STATE & COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.
2. C.GOPINATHAN UNNITHAN, S/O.CHELLAPPAN UNNITHAN
SUNILA BHAVAN, PEROOR, TKMC(PO)
KOLLAM.

R2 BY ADV. SRI.B.MOHANLAL
R1 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 25-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.374 of 2015

Dated this the 25th day of September 2015

O R D E R

The revision petitioner is the accused in C.C.No.1156 of 2007 on the files of the Court of the Judicial Magistrate of First Class-1, Kollam.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short “the N.I.Act”) and sentenced him thereunder to simple imprisonment for one year and to pay a compensation of Rs.5,00,000/- with interest at the rate of 9% per annum to the complainant under Sec. 357 (3) Cr.P.C. The appeal filed against the said conviction and

sentence was dismissed by the appellate court, as per judgment in Crl.Appeal No.238 of 2012. Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

3. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

4. The prosecution allegation is that the revision petitioner borrowed an amount of Rs.5,00,000/- from the complainant and towards the discharge of the said liability, the revision petitioner issued Ext.P1 cheque in favour of the complainant. The 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 and PW2 were examined and Exts.P1 to P8 were marked for the complainant. No evidence was adduced on the side of the defence. 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. 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 appreciation of evidence by 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 concurrent finding of the courts below that the revision petitioner committed the offence under Section 138 of the N.I.Act.

6. The cheque amount is 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. 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 three months.
- (iv) in the event of realisation of the 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 time to
pay the fine, as requested by the learned counsel for the
revision petitioner.

Sd//
B.SUDHEENDRA KUMAR, JUDGE.

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/ True copy /

PA to Judge