

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

Crl.Rev.Pet.No. 569 of 2015 ()

AGAINST THE JUDGMENT IN CRA 246/2013 of ADDL.DISTRICT COURT,KOTTAYAM
DATED 27-09-2014

AGAINST THE JUDGMENT IN ST 67/2012 of JUDICIAL FIRST CLASS
MAGISTRATE-III, KANJIRAPPALLY, DATED 26-06-2013

REVISION PETITIONER/APPELLANT/ACCUSED:

KAVITHA PRASAD,
W/O.PRASAD, POOVATHINKAL VEEDU, PONKUNNAM P O
CHIRAKKADAVU VILLAGE, PONKUNNAM-686 506

BY ADVS.SRI.R.MURALIDHARAN (AROOR)
SRI.IVANS C. CHAMAKKALA

RESPONDENTS/RESPONDENTS/COMPLAINANT&STATE

1. SASIDHARAN NAIR
SASIDHARAN NAIR, PADIPPURAKKAL HOUSE, CHENNAKKUNNU P O
CHIRAKKADAVU VILLAGE, PONKUNNAM-686506
2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA

R1 BY ADV. SRI.S.MANU
R2 BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 14-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No. 569 of 2015

Dated this the 14th day of September, 2015

ORDER

The revision petitioner is the accused in ST No.67/2012 on the files of the court of the Judicial Magistrate of First Class-III, Kanjirappally.

2. The revision petitioner was convicted by the trial court under Section 138 of the N.I Act and sentenced to simple imprisonment for three months and to pay a compensation of Rs.1,00,000/- to the complainant under Section 357 (3) Cr.PC. The appellate court as per judgment dated 27.09.2014, in Crl.Appeal 246/2013, dismissed the appeal filed by the revision petitioner confirming the conviction and sentence passed by the trial court. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard.

4. The prosecution allegation is that the revision

petitioner borrowed an amount of Rs.1,00,000/- from the complainant. 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 closure of account by 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 make payment of the cheque amount within the statutory period of thereafter.

5. Before the trial court, PW1 was examined and Exts.P1 to P6 were marked for the complainant. No evidence was adduced by the defence. The courts below concurrently found that the revision petitioner executed Ext.P1 cheque as contemplated under Section 138 of N.I Act. 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. In this case, no circumstance has been brought to my notice to indicate that the finding of the courts below with

regard to the execution of Ext.P1 cheque by the revision petitioner, is perverse or incorrect. Having gone through the records, I am satisfied that the courts below correctly appreciated the evidence and came to the conclusion that the revision petitioner committed the offence under Section 138 of the N.I Act. In the said circumstances, I find no 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. Now the question to be considered is the quantum of sentence to be awarded to the revision petitioner. The amount covered by Ext.P1 cheque is Rs.1,00,000/-. 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.1,00,000/- to meet the ends of justice. Accordingly I order so.

7. In the 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 the N.I Act.

2) the sentence awarded by the courts below under Section 138 of N.I Act stands modified and reduced to imprisonment till the rising of the court and a fine of Rs.1,00,000/-(Rupees one lakh only).

3) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for two months.

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.PC.

5) the revision petitioner is granted three months time to pay the fine.

Sd/-
B.SUDHEENDRA KUMAR
JUDGE

sm/