

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

Crl.Rev.Pet.No. 1054 of 2015 ()

CRA 53/2012 of ADDL. SESSIONS COURT - VI, KOLLAM
CC 227/2008 of J.M.F.C.-I, KOLLAM

REVISION PETITIONER/APPELLANT/ACCUSED:

KANCHANA G.L.,
W/O.BABU, GRACE CORNER
PADAPPAKKARA P.O. PERAYAMCHERRY, MULAVANA VILLAGE
KOLLAM DISTRICT.

BY ADVS.SRI.K.SIJU
SMT.S.SEETHA
SMT.NIMA JACOB

RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE:

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1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM 682031
 2. ANIL T.C.
S/O.CLEETUS, ANIL SADANAM, KUMBALAM P.O.
PERAYAMCHERRY, MULAVANA VILLAGE, KOLLAM DISTRICT -691361

R1 BY PUBLIC PROSECUTOR, SRI.JUSTIN JACOB

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 01-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1054 of 2015

Dated this the 1st day of September 2015

ORDER

The revision petitioner is the accused in C.C. No.227 of 2008 on the files of the court of the Judicial First Class Magistrate, Kollam.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act (for short 'the N.I. Act') and sentenced her thereunder to simple imprisonment for three months and to pay a compensation of Rs.85,000/- to PW1 under Section 357(3) Cr.P.C. The appeal filed against the said conviction and sentence was

dismissed by the Additional Sessions Court as per judgment dated 2.2.2015 in CrI.Appeal No.53 of 2012.

Aggrieved by the said conviction and sentence, the accused before the trial court has filed this CrI.R.P.

3. The allegation against the revision petitioner is that the revision petitioner borrowed an amount of Rs.1,25,000/- from the complainant and towards the discharge of the said liability, she issued Ext.P1 cheque in favour of the complainant. When the said cheque was presented for encashment, it 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.

4. Heard.

5. Before the trial court, the complainant himself got examined as PW1 and Exts.P1 to 4 were marked for the complainant. DW1 was examined for the revision petitioner. The courts below considered the oral and documentary evidence adduced by the complainant and the revision petitioner and entered into the finding 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 not accepted by the courts below. Having gone through the judgments of the courts below, I am satisfied that the courts below correctly appreciated the evidence and entered into a finding that the revision petitioner has committed the offence under Section 138 of the N.I. Act. Since there is concurrent

finding of guilt and conviction by the courts below, this court will not be justified in re-appreciating the evidence unless the appreciation made by the courts below was perverse, incorrect or illegal. Having gone through the evidence of PW1, I am satisfied that the courts below correctly appreciated the evidence and came to the conclusion that the complainant/second respondent herein succeeded in establishing that the revision petitioner committed the offence under Section 138 of the N.I. Act. In the said circumstances, I do not find any reason to interfere with the verdict of guilty and conviction passed by the courts below under Section 138 of the N.I. Act.

6. Now the question to be decided is the quantum of sentence to be awarded against the revision petitioner. The Cheque amount is Rs.1,25,000/-. During the pendency of

the case, an amount of Rs.40,000/- was admittedly paid by the revision petitioner. Considering the facts and circumstances of the case, including the amount covered by Ext.P1 cheque, I am of the view that it is only just and proper to modify and reduce the sentence awarded by the courts below to imprisonment till rising of the Court and a fine of Rs.85,000/- to secure the ends of justice and accordingly, I order so.

In the result, this Crl.R.P. 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 the N.I. Act stands modified and reduced to imprisonment till the rising of the court and a fine of Rs.85,000/-,

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

(4)in the event of realisation of the fine amount, the entire amount shall be given to PW1 as compensation under Section 357(1)(b) Cr.P.C.

The revision petitioner is granted six months time, as requested by the learned counsel for the revision petitioner, for depositing the amount, to comply with the direction in this order.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

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/ True copy /

PA to Judge