

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

Crl.Rev.Pet.No. 1072 of 2015 ()

AGAINST THE JUDGMENT IN CRA 238/2011 ON THE FILES OF THE ADDL.
SESSIONS JUDGE – I, THIRUVANANTHAPURAM

AGAINST THE ORDER IN ST 145/2010 of J.M.F.C.-X, TRIVANDRUM

REVISION PETITIONER(S):

K.A. BAHULEYAN, AGED 63 YEARS,
NANDANAM , THEKKUMKARA, NEDUMANGAD P.O.,
KARIPUR VILLAGE, NEDUMANGAD TALUK, THIRUVANANTHAPURAM

BY ADV. SRI.SAJU.S.A

RESPONDENT(S):

1. K. MOHANAKUMAR,
T.C. 10/1047, KARTHIKA,
MANNAMOOLA, PEEROORKADA P.O.,
THIRUVANANTHAPURAM – 695 005
2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM , PIN – 682 031

BY PUBLIC PROSECUTOR SRI. JUSTIN JACOB

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 02-09-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

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Crl.R.P.No. 1072 of 2015
.....

Dated this the 2nd day of September, 2015

ORDER

The accused in S.T. No. 145 of 2010 on the files of the Court of the Judicial Magistrate of First Class-X, Thiruvananthapuram has filed this revision petition challenging the concurrent finding of conviction and sentence under Section 138 of the Negotiable Instruments Act, 1881 ("the N.I.Act for short).

2. The revision petitioner was convicted under Section 138 of the N.I. Act by the trial Court and sentenced him to simple imprisonment for two months and to pay compensation of ₹ 50,000/- to the complainant under Section 357 (3) Cr.P.C. with a default clause of simple imprisonment for one month. The appeal filed against the said conviction and sentence was allowed in part by the Appellate Court as per judgment dated 11-02-2015 in Crl.A. 238/2011 whereby the conviction was confirmed and the sentence awarded by the trial court was modified to imprisonment till the rising of the court and a fine of ₹ 50,000/-. Aggrieved by the said conviction and sentence, this Revision

Petition was 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 ₹ 50,000/- 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 accused. 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. The complainant himself got examined as PW1 and Exts. P1 to P6 were marked for the complainant before the trial court. 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 accused had executed Ext.P1 cheque as contemplated under Section 138 of the N.I. Act. Since there is concurrent finding of fact, 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 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 disturb the concurrent finding of facts by the courts below.

6. As regards the sentence, the cheque amount is ₹ 50,000/-. It has been submitted by the learned counsel for the revision petitioner that the revision petitioner and the first respondent are close relatives. 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 trial Court as modified by the Sessions Court can be further modified and reduced to imprisonment till the rising of the Court and a fine of Rs. 50,000/- (Rupees fifty thousand 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 Section 138 of the N.I. Act,
- (ii) the sentence awarded by the courts below

stands modified and reduced to imprisonment till rising of the court and a fine of Rs.50,000/- (Rupees fifty thousand only),.

- (iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for one month.
- (iv) 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.P.C.
- (v) The revision petitioner is granted 6 months time to make payment of the amount of fine ordered by this Court.

**B.SUDHEENDRA KUMAR,
JUDGE**

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