

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

Crl.Rev.Pet.No. 1086 of 2015 ()

CRA 287/2012 of ADDL. SESSIONS COURT - III, MANJERI  
CC 699/2010 of J.M.F.C.-I, PERINTHALMANNA

REVISION PETITIONER/APPELLANT/ACCUSED :

DINESAN K.,  
S/O. MALLUNNIMASTER, KALATHIL HOUSE, EZHAKKAD AMSOM  
EZHAKKAD POST, MUNDUR, PALAKKAD DISTRICT.

BY ADVS.SRI.A.R.GANGADAS  
SRI.M.L.SURESH KUMAR

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE :

1. ABDUL NAZAR K.  
S/O. HYDRU ALI, KARIMBANA HOUSE, MANKADA AMSOM  
KOOTTIL DESOM, KOOTTIL P.O., MANKADA VIA  
MALAPPURAM DISTRICT-679 324.

2. STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, ERNAKULAM-682 031.

R2 BY PUBLIC PROSECUTOR, SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION  
ON 04-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**B.SUDHEENDRA KUMAR, J.**

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Crl.R.P. No.1086 of 2015 A  
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Dated this the 4<sup>th</sup> day of September 2015

O R D E R

The revision petitioner is the accused in C.C. No.699 of 2010 on the files of the Court of the Judicial Magistrate of First Class-1, Perinthalmanna.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act (for short 'the N.I. Act') and sentenced him thereunder to simple imprisonment for six months and to pay Rs.25,000/- as compensation under Section 357(3) of the Code of

Criminal Procedure. The appeal filed against the said conviction and sentence was dismissed by the appellate court as per judgment dated 30.12.2014 in Crl.Appeal No.287 of 2012. Aggrieved by the said conviction and sentence, the accused before the trial court has filed this Crl. Revision Petition.

3. The case of the complainant is that the revision petitioner collected an amount of Rs.25,000/- from the complainant agreeing to arrange a visa for him. However, he failed to arrange the visa, as promised. 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, which was received by the revision petitioner. However, the revision petitioner did not pay the cheque amount within the statutory period or thereafter.

4. Before the trial court, the complainant himself got examined as PW1 and Exhibits P1 to P5 were marked for the complainant. No evidence was adduced on the side of the revision petitioner. The courts below, relying on the documentary as well as oral evidence adduced by the complainant, concurrently found that the accused executed Ext.P1 cheque as contemplated under Section 138 of the the 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, incorrect or illegal. No

circumstance has been brought to my notice to indicate that the finding on facts by the courts below is perverse or incorrect. In the said circumstances, the concurrent finding of the courts below that the accused committed the offence under Section 138 of the N.I. Act, does not call for any interference by this Court.

5. Now the question to be decided is the quantum of sentence to be awarded to the revision petitioner. The cheque amount in this case is only Rs.25,000/-. 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.25,000/-, to secure the ends of

justice and accordingly, I order so.

In the result, the CrI. 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 rising of the court and a fine of Rs.25,000/-,

(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.

The revision petitioner is granted two 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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*PA to Judge*