

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

Crl.Rev.Pet.No. 1128 of 2015 ()

CRA 891/2010 of I ADL.S.C., THIRUVANANTHAPURAM
ST 1588/2006 of J.M.F.C.-VIII, THIRUVANANTHAPURAM

REVISION PETITIONER/APPELLANT/ACCUSED:

R.RAJENDRAKUMAR
S/O.PRABHAKARAN, KALPANA, NV NAGAR
PEROORKKADA PO, THIRUVANANTHAPURAM.

BY ADVS.SRI.ALIAS M.CHERIAN
SRI.U.B.SIRAS

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

1. SHAJILAL S.L
LAL NIVAS, NEYYAPPALLY, MUKKOLE
KARAKULAM PO, THIRUVANANTHAPURAM-695 564.

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031

R2 BY PUBLIC PROSECUTOR, SHRI.R.GITESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
17-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1128 of 2015

Dated this the 17th day of September 2015

ORDER

The revision petitioner is the accused in S.T. No.1588 of 2006 on the files of the Court of the Judicial Magistrate of First Class Magistrate– VII, Thiruvananthapuram.

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 imprisonment till the rising of the court and a fine of Rs.2,10,000/- with interest at the rate of 8% per annum

from 24.8.2006 till realisation under Section 357(3) Cr.P.C. with a default clause for simple imprisonment for three months. The appeal filed against the said conviction and sentence was dismissed by the appellate court as per judgment in Crl.Appeal No.891 of 2010. Aggrieved by the said conviction and sentence, the revision petitioner has filed this revision petition.

3. Heard the learned counsel for the petitioner and the learned public prosecutor.

4. The prosecution allegation is that the revision petitioner borrowed an amount of R.2,10,000/- from the complainant and towards the discharge of the said liability, the revision petitioner issued Ext.P1 cheque in favour of the complainant. The said cheque was presented 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 trial court, PW1 was examined and Exts.P1 to P7 were marked for the prosecution. No evidence was adduced from the side of the revision petitioner.

6. The courts below, relying on the evidence of PW1 and the documentary evidence adduced by the complainant, concurrently found 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 repelled by the courts below. Since there is concurrent finding on facts by the courts below, 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 finding of 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.

7. As regards the sentence, the learned counsel for the

revision petitioner has pleaded for leniency. The cheque amount is Rs.2,10,000/-. Considering the facts and circumstances of the case, including the amount covered by the 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.2,10,000/- to secure the ends of justice. Accordingly, I order so.

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 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.2,10,000/

(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.P.C.

The revision petitioner is granted six months time to
suffer the sentence, as requested by the learned counsel for
the revision petitioner.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

dl

/ True copy /

PA to Judge