

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. 1134 of 2015 ()

CRA 220/2013 of SESSIONS COURT, ALAPPUZHA
CC 682/2010 of J.M.F.C.-I, CHERTHALA

REVISION PETITIONER/APPELLANT/ACCUSED:

BASTIN PILLAI
SON OF WILLSON, KAKARIYIL HOUSE, ARTHUNKAL PO
NEAR REETHALAYAM CHURCH, CHERTHALA, ALAPPUZHA DISTRICT

BY ADV. SRI.K.RAMANADHAN

RESPONDENTS/COMPLAINANTS/AND STATE:

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1. LENIN
S/O.SASI, LENIN NIVAS, CMC 20
CHERTHALA, 688524
 2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, 682031

BY PUBLIC PROSECUTOR, BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 14-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P.No.1134 of 2015

Dated this the 14th day of September 2015

O R D E R

The revision petitioner is the accused in C.C. No.682 of 2010 on the files of the Court of the Judicial Magistrate of First Class-I, Cherthala.

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 to pay a compensation of Rs.25,000/- to the complainant with 9% interest from 18.12.2009. The appellate court as per

judgment in Crl. Appeal No.220 of 2013 dismissed the appeal confirming 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 issued Ext.P1 cheque in favour of the complainant towards the discharge of the liability due to the complainant from the revision petitioner. 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 court below, the complainant himself got examined as PW1 and Exts.P1 to P5 were marked for the complainant. DW1 was examined on the side of the revision petitioner.

6. The courts below, relying on the documentary as well as oral evidence adduced by the complainant, concurrently found that the revision petitioner had executed Ext.P1 cheque as contemplated under Section 138 of 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 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 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 pleaded for leniency. The cheque is for 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. 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 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.25,000/- (Rs. twenty five thousand

only)

- (3) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for one month.
- (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 three months time to make payment of the fine ordered by this Court.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

dl

/ True copy /

PA to Judge