

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

Crl.Rev.Pet.No. 1147 of 2015 ()

CRA 43/2013 of SESSIONS COURT, PALAKKAD
CC 377/2009 of J.M.F.C.-III, PALAKKAD

REVISION PETITIONER/APPELLANT/ACCUSED:

1. M/S.UNITED FOOD INDUSTRIES
L.N.PURAM, CHOKKANATHAPURAM, PALAKKAD
REPRESENTED BY PROPRIETRIX, RENJU.
2. RENJU AGED 44 YEARS
W/O.MURALEEDHARAN, L.N.PURAM, CHOKKANATHAPURAM
PALAKKAD.

BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

1. HARI, AGED 48 YEARS
S/O.VELLAYAN, SHIVAJI ROAD, KARNAKI NAGAR
VADAKKANTHARA, PALAKKAD, 678012.
2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM 682031.

BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
16-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1147 of 2015

Dated this the 16th day of September 2015

O R D E R

The revision petitioners are the accused in C.C. No.377 of 2009 on the files of the Court of the Judicial Magistrate of First Class - III, Palakkad.

2. The trial court convicted the revision petitioners under Section 138 of the Negotiable Instruments Act (for short 'the N.I.Act') and sentenced them thereunder to simple imprisonment for three months and a fine of Rs.1,10,000/- under Section 138 of the N.I.Act. The appeal filed against the said conviction and sentence was

dismissed as per judgment in CrI.Appeal No.43 of 2013. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard the learned counsel for the revision petitioners and the learned Public Prosecutor.

4. The prosecution case is that the revision petitioners borrowed an amount of Rs.1,10,000/- from the complainant for the business purpose. The first revision petitioner is the the firm and the second revision petitioner is its proprietrix. Towards the discharge of the said liability, the second 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 the insufficiency of funds in the account of the second

revision petitioner. Statutory notice was issued to the revision petitioners, which was received by them. However, the revision petitioners 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 P5(b) were marked for the complainant.

6. The courts below, after evaluating the documentary as well as the oral evidence adduced by the complainant, concurrently found that the second revision petitioner executed Ext.P1 cheque as contemplated under Section 138 of the N.I. Act. 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 petitioners guilty under Section 138 of the N.I. Act and convicted them 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 petitioners committed the offence under Section 138 of the N.I. Act.

7. As regards the sentence, the learned counsel for the revision petitioners has pleaded for leniency. The cheque amount is Rs.1,10,000/- 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.1,10,000/- 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 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.1,10,000/-and in default of payment of fine, to simple imprisonment for two months.

- (3) 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 petitioners are granted six months time to pay the fine.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

dl

/ True copy /

PA to Judge