

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. 1153 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN CRA 514/2011 of ADDITIONAL
DISTRICT COURT (ADHOC - I), PALAKKAD DATED 29-07-2013

AGAINST THE ORDER/JUDGMENT IN ST 846/2008 of J.M.F.C.-
I, PALAKKAD DATED 26-09-2011

REVISION PETITIONER(S)/REVISION PETITIONER:

KANNAN AGED 49 YEARS
S/O.LATE VISWANATHAN NAIR, 24/624, NURANI (P.O)
PALAKKAD

BY ADV. SMT.K.K.JYOTHILAKSHMY

RESPONDENT(S)/RESPONDENTS:

1. A.A.KABEER, AGED 46 YEARS
S/O.A.M ALI, 39/223, AMBATTUVALAVIL
ERUMAKKARASTREET, CITY POST, PALAKKAD

2. STATE OF KERALA
REPT. PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM

BY PUBLIC PROSECUTOR SRI.V.S. SREEJITH

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.

.....
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.....

Dated this the 17th day of September, 2015

ORDER

The revision petitioner is the accused in ST. No. 846 of 2008 on the files of the Court of the Judicial Magistrate of First Class-I, Palakkad. The revision petitioner was convicted by the trial court under Section 138 of the Negotiable Instruments Act, 1881 ("the N.I.Act" for short) and sentenced him thereunder to simple imprisonment for one month and to pay compensation of Rs. 90,000/- to the complainant under Section 357 (3) Cr.P.C. The appeal filed against the said conviction and sentence was dismissed by the appellate court as per judgment dated 29-07-2013 in Crl. Appeal 514 of 2011.

2. Heard the learned counsel for the revision petitioner.

3. The prosecution case is that the revision petitioner borrowed an amount of 90,000/- from the complainant and

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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 accounts 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.

4. Before the court below, PW1 was examined and Exts. P1 to P6 were marked for the complainant. No evidence was adduced on the side of the defence.

5. The courts below, after evaluating the oral and documentary evidence adduced by the complainant, concurrently found that the revision petitioner executed Ext. P1 cheque as contemplated under Section 138 of the NI Act. The defence set up by the petitioner was also repelled by the courts below. Since there is a 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 appreciation of evidence by the courts below was perverse or incorrect. In the

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said circumstances, the concurrent finding of the courts below that the revision petitioner committed the offence under Section 138 of the N.I. Act does not warrant any interference by this Court.

6. The cheque is for Rs. 90,000/-. 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. 90,000/- 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 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. 90,000/- (Rupees ninety thousand only)

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iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for two months .

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.

7. The revision petitioner is granted six months' time to make payment of the amount of fine ordered by this Court.

I make it clear that the payment which will be made directly to the complainant will be treated as sufficient compliance of the direction of payment of fine in this order, provided the receipt in that regard shall be produced before the trial Court.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. to Judge