

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

Crl.Rev.Pet.No. 1225 of 2015 ()

JUDGMENT IN CRA 289/2012 OF THE ADDITIONAL SESSION COURT- VII,
ERNAKULAM DATED 25-04-2015

JUDGMENT IN ST 4166/2010 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT, KOLENCHERRY DATED 27-02-2012

REVISION PETITIONER/APPELLANT/ACCUSED:

1. M/S.INNOVTION ADVERTISING COMPANY,
41/2826 A1, NORTH PARK BUILDING, ST.VINCENT ROAD
KOCHI-682018
REPRESENTED BY MANAGING PARTNER MR.V.A.GIRIJAN.
2. MR.V.A.GIRIJAN, AGED 48 YEARS
MANAGING PARTNER
M/S. INNOVATION ADVERTISING COMPANY, 41/2826, A1
NORTH PARK BUILDING, ST.VINCENT ROAD, KOCHI-682018.

BY ADVS.SRI.S.K.AJAY KUMAR
SRIK.C.SURESH
SMT.PRIYA. H.

RESPONDENTS/COMPLAINANT AND STATE:

1. M/S. S.T.REDDIAR & SONS (EKM) VEEKSHANAM ROAD,
REPRESENTED BY PARTNER AND CHIEF EXECUTIVE OFFICER
R.SURESH, AGED 56 YEARS, SON OF RAJENDRAN
VEEKSHANAM ROAD, KOCHI-35
2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 05-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.1225 of 2015

Dated this the 5th day of October, 2015.

ORDER

The revision petitioners are the first and the second accused in S.T.No.4166 of 2010 on the files of the court of the Judicial Magistrate of First Class, Kolencherry.

2. The trial court convicted the revision petitioners under Section 138 of the Negotiable Instruments Act and sentenced the second revision petitioner thereunder to simple imprisonment for three months. Both the revision petitioners had been sentenced to pay a fine of ₹50,000/- each also by the trial court. The appeal filed against the said conviction and sentence, was dismissed by the appellate court. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard the learned counsel for the petitioners.

4. The prosecution case can be briefly stated as follows:

The first accused is a partnership firm engaged in the field of advertising. The second accused is the managing partner and the third accused is the partner of the first accused firm. The first accused used to place orders with the complainant for printing, and towards the part-payment of the costs of printing and printing materials, the second and the third accused issued Ext.P3 cheque in favour of the complainant. The said cheque was presented by the complainant for encashment. However, the same was dishonoured due to insufficiency of funds in the account of the accused. Statutory notice was issued on behalf of the complainant, which was received by the accused. However, the accused did not make payment of the cheque amount within the statutory period or thereafter. The first and the second accused alone faced the trial and hence the case against the third accused was refiled as S.T.No.1030 of 2012.

5. Before the trial court, PW1 was examined and Exts.P1 to P9 were marked for the complainant.

6. The courts below, after evaluating the oral and documentary evidence adduced by the complainant, concurrently found that the revision petitioners executed Ext.P3 cheque as contemplated under Section 138 of the N.I Act. The defence set up by the revision petitioners was also repelled by the courts below. 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 concurrent finding by the courts below is perverse or incorrect. In the said circumstances, the concurrent finding by the courts below that the revision petitioners committed the offence under Section 138 of N.I Act does not warrant any interference by this court.

7. As regards the sentence, the learned counsel for the revision petitioners has pleaded for leniency.

8. The cheque is for an amount of ₹50,000/-. Considering the facts and circumstances of the case, including

the amount covered by Ext.P3 cheque, I am of the view that the sentence awarded by the courts below on the revision petitioners can be modified and reduced to meet 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 Negotiable Instruments Act.

(ii) the sentence awarded by the courts below against the first revision petitioner stands modified and reduced to a fine of ₹5,000/- (Rupees five thousand only).

(iii) the sentence awarded by the courts below against the second revision petitioner stands modified and reduced to a fine of ₹50,000/- (Rupees fifty thousand only).

(iv) in default of payment of fine, the second

revision petitioner shall undergo simple imprisonment for two months.

(v) in the event of realisation of fine amount, the entire amount shall be given to the complainant as compensation under Section 357 (1) (b) Cr.P.C.

(vi) the revision petitioners are granted six months time to pay the fine amount as requested by the learned counsel for the revision petitioners.

**Sd/-
B. SUDHEENDRA KUMAR
JUDGE**

Scl.