

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. 1228 of 2015 ()

JUDGMENT IN CRA 358/2010 OF THE SESSIONS COURT, MANJERI
DATED 04-07-2015

JUDGMENT IN CC 398/2006 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
MALAPPURAM DATED 20-10-2010

REVISION PETITIONER/APPELLANT/ACCUSED:

MOIDEEN K.P, S/O. HASSANKUTTY,
KUTTALLOOR PARI HOUSE, CHEMMAD P.O.
MALAPPURAM DISTRICT.

BY ADVS.SRI.P.VENUGOPAL (1086/92)
SMT.T.J.MARIA GORETTI

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

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1. V.RAYIN, S/O. KUNHABDULLA MASTER,
MOOLATHUMANNIL HOUSE, DOWN HILL-PO
MALAPPURAM DISTRICT, PIN: 676 519.
 2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM - 682 031.

R BY PUBLIC PROSECUTOR SRI.R.GITHESH

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.1228 of 2015

Dated this the 5th day of October, 2015.

ORDER

The revision petitioner is the accused in C.C.No.398 of 2006 on the files of the court of the Judicial Magistrate of First Class, Malappuram.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him thereunder to simple imprisonment for one year and a fine of ₹2,20,000/- with a default clause for simple imprisonment for three months. In the appeal filed against the said conviction and sentence, the appellate court confirmed the conviction and modified the sentence to imprisonment till the rising of the court and a compensation of ₹3,25,000/- to the complainant under Section 357(3) Cr.P.C. with a default clause for simple imprisonment for three months. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard the learned counsel for the petitioner.

4. The prosecution allegation is that the revision petitioner issued Ext.P2 cheque in favour of the complainant towards the discharge of the liability of the revision petitioner to the complainant. The complainant presented the said cheque for encashment. However, the same was dishonoured with the endorsement, 'refer to drawer'. There was no amount in the account of the revision petitioner to honour the cheque. 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, PW1 and PW2 were examined and Exts.P1 to P8 were marked for the complainant. No evidence was adduced on the side of the revision petitioner.

6. The courts below after evaluating the oral and documentary evidence adduced by the complainant, concurrently found that the revision petitioner executed Ext.P2

cheque as contemplated under Section 138 of the N.I Act. The defence set up by the revision petitioner 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 petitioner 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 petitioner has pleaded for leniency. The cheque is for an amount of ₹2,00,000/-. Considering the facts and circumstances of the case, including the amount covered by Ext.P2 cheque, I am of the view that the sentence awarded by the trial court as modified by the appellate court can be further modified and reduced to imprisonment till the rising of the

court and a fine of ₹2,00,000/- to secure the ends of justice.

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 trial court as modified by the appellate court under Section 138 of the Negotiable Instruments Act stands further modified and reduced to imprisonment till the rising of the court and a fine of ₹2,00,000/- (Rupees two lakhs only).

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

(iv) in the event of realisation of fine, the entire amount shall be given to the complainant as

compensation under Section 357 (1) (b) Cr.P.C.

(v) the revision petitioner is granted four months time to pay the fine as requested by the learned counsel for the revision petitioner.

Sd/-

**B. SUDHEENDRA KUMAR
JUDGE**

Scl.

True Copy

PA to Judge