

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

Cr1.Rev.Pet.No. 1233 of 2015 ()

IN CRL.APPEAL 953/2006 of ADDL. DISTRICT COURT AND SESSIONS JUDGE,
FAST TRACK COURT-II, THIRUVANANTHAPURAM.

IN ST 456/2006 of JUDICIAL FIRST CLASS MAGISTRATE COURT-II, VARKALA.

REVISION PETITIONER/APPELLANT/ACCUSED:

LATHIKA VENUGOPAL,
KUYILAZIKAM VEEDU,
NEAR TAYYIL TEMPLE, KONGAL, KOTTAPURAM VILLAGE
POZHICKARA.P.O., PARAVOOR, KOLLAM.

BY ADV. SRI.B.S.SURESH (CHIRAKKARA)

RESPONDENT/RESPONDENTS/COMPLAINANT & STATE:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
2. SALIM, S/O.SUBAIR,
MAVUNINNAVILA VEEDU, ODAYAM, VARKALA.P.O. 695 141.

BY ADV. 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:

B.SUDHEENDRA KUMAR, J.

Crl.R.P.No.1233 of 2015

Dated this the 5th day of October, 2015

ORDER

The revision petitioner is the accused in S.T. 456/2006 on the files of the court of the Judicial Magistrate of First Class-II, Varkala.

2. The revision petitioner was convicted by the trial court under Section 138 of the N.I Act and sentenced thereunder to simple imprisonment for one year and to pay compensation of Rs.2,00,000/- to the complainant under Section 357 (3) Cr.PC. In the appeal filed against the said conviction and sentence, the Additional Sessions Court, Thiruvananthapuram, as per judgment in Crl. Appeal 953/2006, confirmed the conviction and modified the sentence to simple imprisonment for six months and to pay a compensation of Rs.2,00,000/- to the complainant. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard the learned counsel for the revision petitioner.

4. The prosecution allegation is that the revision petitioner issued Ext.P1 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 due to insufficiency of funds in the account of the revision petitioner. Statutory notice was issued on behalf of the complainant, 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 trial court, PW1 was examined and Exts.P1 to P5 were marked for the complainant. DW1 and DW2 were examined and Exts. D1 to D4 were marked for the defence.

6. The courts below after evaluating the oral and documentary evidence adduced by the parties, concurrently found that the revision petitioner executed Ext.P1 cheque as contemplated under Section 138 of 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. In this case, no circumstance has been brought to my notice to indicate that the finding of the courts below with regard to the execution of Ext.P1 cheque by the revision petitioner, is perverse or incorrect. Having gone through the records, I am satisfied that the courts below correctly appreciated the evidence and came to the conclusion that the revision petitioner committed the offence under Section 138 of the N.I Act. In the said circumstances, I find no 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. The amount covered by Ext.P1 cheque is Rs.2,00,000/-. Considering the facts and circumstances of the case, including the amount covered by the 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.2,00,000/- to meet the ends of justice and accordingly I order so.

8. 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 N.I Act stands modified and reduced to imprisonment till the rising of the court and a fine of Rs.2,00,000/-(Rupees two lakhs 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.PC.

The revision petitioner is granted six months to pay the fine.

Sd/-
B.SUDHEENDRA KUMAR
JUDGE

sm/