

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

Crl.Rev.Pet.No. 1246 of 2015 ()

CRA 199/2014 of III SESSIONS COURT, THRISSUR
CC 995/2011 of J.M.F.C., KODUNGALLUR

REVISION PETITIONER/APPELLANT/ACCUSED:

PRABHILASH K.C.
AGED 35 YEARS, S/O.CHANDRABABU, KIZHAKKANI HOUSE
C/O.THRIIPRAYATTU VISWAMBARAN, NEAR CODANVALAVU EAST
P.O. VALAPPAD BRANCH, THRISSUR.

BY ADV. SRI.V.C.MADHAVANKUTTY

RESPONDENTS/RESPONDENTS/STATE & COMPLAINANT:

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1. STATE OF KERALA
REPRESENTED BY ITS PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
 2. KANNAN V.B.
AGED 45 YEARS, S/O.BALAKRISHNAN, VIKRANCHERY HOUSE
P.O.VALAPPAD BEACH, THRISSUR - 680 001.

R1 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
07-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1246 of 2015

Dated this the 7th day of October 2015

O R D E R

The revision petitioner is the accused in C.C. No.995 of 2011 on the files of the Court of the Judicial Magistrate of First Class-I, Kodungallur.

2. The trial court convicted the revision petitioner under Section 138 of Negotiable Instruments Act (for short 'the N.I. Act') and sentenced him to simple imprisonment for three months and to pay a compensation of Rs.1,00,000/- 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. Aggrieved

by the said conviction and sentence, this revision petition has been filed.

3. Heard.

4. The prosecution allegation is that the revision petitioner issued Ext.P1 cheque in favour of the complainant, towards the discharge of his liability 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 to the revision petitioner, which was returned unserved as the revision petitioner refused to accept the same even after the receipt of intimation from the postal authorities. The revision petitioner did not make payment of the cheque

amount within the statutory period or thereafter.

5. Before the court below, PW1 was examined and Exts.P1 to P5 were marked for the complainant. No evidence was adduced on the side of the defence.

6. The courts below, relying on the documentary as well as oral evidence adduced by the complainant, concurrently found that the revision petitioner had executed Ext.P1 cheque as contemplated under Section 138 of the N.I. Act. The defence set up by the revision petitioner was 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 appreciation of evidence by

the courts below was perverse or incorrect. The courts below concurrently found the revision petitioner guilty under Section 138 of the N.I.Act and convicted him 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 petitioner committed the offence under Section 138 of the N.I.Act.

7. The cheque is for Rs.1,00,000/-. 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.1,00,000/- 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 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.1,00,000(Rs.one lakh 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 the fine amount, the entire amount shall be given to the complainant as

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

The revision petitioner is granted six months to pay the fine, as requested by the learned counsel for the revision petitioner.

sd/
B.SUDHEENDRA KUMAR,
JUDGE

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PA to Judge