

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

Crl.Rev.Pet.No. 1311 of 2015 ()

JUDGMENT IN CRA 44/2014 OF THE ADDITIONAL SESSIONS COURT - V,
KOZHIKODE DATED 24-07-2014

JUDGMENT IN ST 164/2012 OF THE JUDICIAL MAGISTRATE OF FIRST CLASS-I,
PERAMBRA DATED 18-12-2013

REVISION PETITIONER/APPELLANT/ACCUSED

RUBIYA K.M., AGED 33 YEARS
W/O. ABDUL NAZAR, TEACHER M.E.S RESIDENTIAL SCHOOL
CHATHAMANGALAM, RESIDING AT VELLANTHODI HOUSE
CHENOLI P.O., PERAMBRA, KOZHIKODE.

BY ADV. SRI.MANSOOR.B.H.

RESPONDENTS/RESPONDENTS/STATE:

1. M/S. SREE GOKULAM CHITS AND FINANCE (P) LTD.
GOKULAM TOWERS, NO. 66, ARCOT ROAD
CHENNAI
REPRESENTED BY ITS ACCOUNTS ASSISTANT SUDHEESH KUMAR P.K.
AGED 35 YEARS, S/O.P.K. KRISHNAN
SRI GOKULAM CHIT AND FINANCE PRIVATE LIMITED
LOVELY BUILDING, ULIERI ROAD, PERAMBRA
KOZHIKODE - 673 024.
2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM -682 031.

R BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 15-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.1311 of 2015

Dated this the 15th day of October, 2015.

ORDER

The revision petitioner is the accused in S.T.No.164 of 2012 on the files of the Court of the Judicial Magistrate of First Class-I, Perambra.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced her thereunder to simple imprisonment for three months and a fine of ₹70,000/-. The appeal filed against the said conviction and sentence, was dismissed. 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 towards the discharge of liability to the complainant, the revision petitioner executed Ext.P2 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 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 P9 were marked for the complainant. No evidence was adduced on the side of the revision petitioner.

6. The courts below, after correctly 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 amount covered by Ext.P2 cheque is ₹61,400/-. 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 courts below can be modified and reduced to imprisonment till the rising of the court and a fine of ₹70,000/- 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 courts below under Section 138 of the Negotiable Instruments Act stands modified and reduced to imprisonment till the rising of the court and a fine of ₹70,000/- (Rupees seventy thousand 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.

The revision petitioner is granted four months time to pay the fine.

Sd/-
B. SUDHEENDRA KUMAR
JUDGE

Scl.

True Copy

PA to Judge