

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. 1312 of 2015 ()

JUDGMENT IN CrI.A 897/2007 OF THE ADDITIONAL SESSIONS COURT, FAST
TRACK (ADHOC)- IV, THIRUVANANTHAPURAM DATED 31-05-2010

JUDGMENT IN CC 591/2004 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT -I, TRIVANDRUM DATED 03-10-2007

REVISION PETITIONER/APPELLANT/ACCUSED:

M.SHABEER, AGED 55 YEARS
MANGULAM HOUSE, MUTTADA, THIRUVANANTHAPURAM.

BY ADVS.SRI.T.G.RAJENDRAN
SRI.T.R.TARIN
SMT.ANN SUSAN GEORGE
SRI.V.A.VINOD

RESPONDENT/COMPLAINANT & STATE:

1. M/S. INVESTMENT TRUST OF INDIA OF INDIA,
MASHKUMAR BUILDINGS, CHENNAI - 34 HAVING ITS
THIRUVANANTHAPURAM BRANCH AT ALSO WOOD LINE,
TC 24/618, LANE ROAD, THYCAUD P.O,
THIRUVANANTHAPURAM, REP. BY ITS BRANCH MANAGER,
THIRUVANANTHAPURAM- 695 023.
2. STATE OF KERALA, REP.BY PUBLIC PROSECUTOR
HIGH COURRT OF KERALA, ERNAKULAM- 682031.

R BY PUBLIC PROSECUTOR SRI.R.GITTHESH.

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.1312 of 2015

Dated this the 15th day of October, 2015.

ORDER

The revision petitioner is the accused in C.C.No.591 of 2004 on the files of the Court of the Judicial Magistrate of First Class-I, Thiruvananthapuram.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him thereunder to simple imprisonment for three months and to pay an amount of ₹28,359/- as compensation to the complainant under Section 357(3) Cr.P.C. In the appeal filed against the said conviction and sentence, the appellate court confirmed the conviction and modified the sentence to simple imprisonment for 15 days and to pay compensation of ₹28,359/- to the complainant under Section 357 (3) Cr.P.C. 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 in order to discharge the liability of the revision petitioner to the complainant, the revision petitioner executed Ext.P3 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 P7 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.P3 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 ₹28,359/-. 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 can be modified and reduced to imprisonment till the rising of the court and a fine of ₹30,000/- 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 ₹30,000/- (Rupees thirty thousand only).

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

(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 shall surrender before the court below on 20.11.2015 to suffer the sentence.

Sd/-

**B. SUDHEENDRA KUMAR
JUDGE**

Scl.

True Copy

PA to Judge