

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1362 of 2015 ()

AGAINST THE JUDGMENT IN CRA 400/2006 of ADDL.SESIONS JUDGE -II,
MAVELIKKARA DATED 30-08-2008
AGAINST THE JUDGMENT IN CC 112/2005 of J.M.F.C., KAYAMKULAM
DATED 04-08-2006

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

DAYAKUMAR
S/O.BALAN, KALAECKAL VEEDU, ERAMATHU PO
THRIPPERUNTHARA, MANNAR

BY ADV. SRI.A.N.RAJAN BABU

RESPONDENT(S)/RESPONDENTS/COMPLAINT AND STATE:

1. JAYASREE
W/O.SURESH, PANACKAL VEEDU, KANNAMPALLY BHAGAM
KAYAMKULAM

2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA

R2 BY PUBLIC PROSECUTOR SRI. R. GITESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 26-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Dated this the 26th day of October, 2015

ORDER

The revision petitioner is the accused in C.C. No. 112 of 2005 on the files of the Court of the Judicial Magistrate of First Class, Kayamkulam.

2. The trial Court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to simple imprisonment for one year 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. Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

3. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

4. The prosecution allegation is that the revision petitioner borrowed an amount of Rs. 1,00,000/- from the complainant

and towards the discharge of the said liability, the revision petitioner executed Ext. P1 cheque in favour of the complainant. 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 accepted 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 P6 were marked for the complainant. No evidence was adduced on the side of the defence.

6. The courts below, correctly evaluated the oral and documentary evidence adduced by the parties and came to the conclusion that the revision petitioner 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. There is no material available before the court to indicate that the concurrent finding of the courts below is perverse or incorrect. In the said circumstances, the concurrent finding of the courts below that the revision petitioner committed the offence under Sec. 138 of the N.I. Act does not warrant any

interference by this Court. The cheque is for an amount of Rs. 1,00,000/-. Considering the facts and circumstances of the case, including the amount covered by Ext. P1 cheque, the sentence awarded by the courts below under Section 138 of the N.I.Act 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 and, accordingly, I order so.

7. In the result, this petition stands allowed in part,

- i) confirming the verdict of guilty and conviction passed by the courts below under Section 138 of the NI Act.
- ii) the sentence awarded by the courts below under Sec. 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/- (Rupees one lakh only)
- iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for 2 months.
- iv) in the event of realisation of the fine amount, the entire amount shall be given

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to the complainant as compensation under
Sec. 357 (1)(b) Cr.P.C.

The revision petitioner shall surrender before the trial
court on 30-11-2015 to suffer the sentence.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. To Judge