

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. 1367 of 2015

CRL.A 512/2014 of ADDL. SESSIONS COURT - V, KOZHIKODE
CC 237/2013 of J.M.F.C.-II, THAMARASSERY

REVISION PETITIONER/APPELLANT/ACCUSED:

MAIMOONATH V.K.,
D/O.MOIDEENKUTTY
EZHUKULATHIL VEEDU
NARIKUNNI PO, KOZHIKODE DISTRICT.

BY ADVS.SRI.SAIJU S.
SRI.A.P.NIDHIN KUMAR

RESPONDENTS/COMPLAINANT & STATE:

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1. THE KERALA STATE FINANCIAL ENTERPRISES LIMITED
THIRUVAMBADY BRANCH, REPRESENTED BY ITS
MANAGER, SHYLAJA M., MELOTTUMKAVIL HOUSE
MANKADA PO., MALAPPURAM DISTRICT, PIN 679 324.
 2. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

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.

Crl.R.P. No.1367 of 2015

Dated this the 26th day of October 2015

O R D E R

The revision petitioner is the accused in C.C.No.237 of 2013 on the files of the Court of the Judicial Magistrate of First Class-1I, Thalasserry

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short “the N.I.Act”) and sentenced him thereunder to simple imprisonment for six months and a fine of Rs.95,500/-. 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 issued Ext.P1 cheque in favour of the complainant in connection with a chitty transaction. 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 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 and PW2 were

examined and Exts.P1 to P8 were marked for the complainant. Ext.D1 was marked for the revision petitioner.

6. The courts below, relying on the documentary as well as oral evidence adduced by the parties, 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 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 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. 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.95,500/- 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.95,500/- (Rupees ninety five thousand five hundred only).
- (iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for three months.
- (iv) in the event of realisation of the 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 six months to pay the fine, as requested by the learned counsel for the revision petitioner. I make it clear that the

payment directly made to the complainant will be treated as sufficient compliance of payment of fine ordered by this court, provided an affidavit in this regard shall be filed by the complainant before the trial court.

sd/-

**B.SUDHEENDRA KUMAR,
JUDGE**

dl

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PA to Judge