

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1384 of 2015 ()

Crl.A 169/2009 OF THE SESSIONS COURT, MANJERI

CC 424/2007 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, MANJERI

REVISION PETITIONER/APPELLANT/ACCUSED:

K.SUNDARAN
PROPRIETOR, FILLYS LADIES TAILORS, 2ND FLOOR
C.P. COMPLEX, PANDIKKAD ROAD, MANJERI P.O.
MALAPPURAM DISTRICT.

BY ADVS.SRI.P.VENUGOPAL (1086/92)
SMT.T.J.MARIA GORETTI

RESPONDENT(S)/RESPONDENTS/COMPLAINANT & STATE:

-
1. A.P.KHALID @ KUNHU
S/O. MOHAMMED HAJI, ANAPPATTATH HOUSE, PUTTAMANNA
KALIKAVU P.O., MALAPPURAM - 676525.
 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM- 682 031.

R1 BY ADV. SRI.K.RAKESH
R BY PUBLIC PROSECUTOR SRI.R.GITESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 18-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.1384 of 2015

Dated this the 18th day of November, 2015

ORDER

The accused in C.C.No.424 of 2007 on the files of the Court of the Judicial Magistrate of First Class-I, Manjeri, has filed this revision petition, challenging the concurrent finding of conviction and sentence passed by the courts below under Section 138 of N.I.Act.

2. Heard both sides.

3. The prosecution allegation is that towards the discharge of the amount due to the complainant, the revision petitioner issued Ext.P1 cheque in favour of the complainant . The complainant presented the said cheque for encashment. However, the same was dishonoured due to the insufficiency of funds in the account of the revision petitioner. Statutory notice was issued on behalf of the complainant to the revision petitioner, which was received by the revision petitioner. However, the revision petitioner did not pay the cheque

amount within the statutory period or thereafter.

4. 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 revision petitioner.

5. The courts below, after evaluating the oral and documentary evidence adduced by the complainant, concurrently found that the revision petitioner executed Ext.P1 cheque as contemplated under Section 138 of the N.I Act and committed the offence under Section 138 of the N.I Act, rejecting the contentions of the revision petitioner. This Court will not interference with the concurrent finding by the courts below, unless there is material to indicate that 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 the N.I Act, does not warrant any interference by this Court.

6. The amount covered by Ext.P1 cheque is ₹90,000/-.

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 appellate court can be modified and reduced to imprisonment till the rising of the court and a fine of ₹90,000/- 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 ₹90,000/- (Rupees ninety 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 to pay the fine as requested by the learned counsel for the revision petitioner.

Sd/-
B. SUDHEENDRA KUMAR
JUDGE

ScI/18.11.2015

True Copy

PA to Judge