

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

Crl.Rev.Pet.No. 802 of 2014 ()

AGAINST THE JUDGMENT IN CRA No. 13/2013 of ADDL. SESSIONS JUDGE,
NEYYATTINKARA DATED 11-02-2014

AGAINST THE JUDGMENT IN ST 1561/2008 of J.M.F.C.-II,
THIRUVANANTHAPURAM DATED 13-12-2012

REVISION PETITIONER(S)/REVISION PETITIONER:

GOPAKUMAR
S/O.SUKUMARAN NAIR, TC 40/632
NEAR MANACAUD SASTHA TEMPLE, MANACAUD P O
THIRUVANANTHAPURAM

BY ADV. SRI.S.MOHAMMED AL RAFI

RESPONDENT(S)/RESPONDENT:

1. STATE OF KERALA
REP BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM

2. MANICKAM
S/O.RAMACHANDRAN PILLAI, KARTHIKA BHAVAN
T C NO 50/1468, THALIYAL, KARAMANA P O
THIRUVANANTHAPURAM-695002

R2 BY ADV. SRI.R.BINDU (SASTHAMANGALAM)
BY PUBLIC PROSECUTOR SRI. JUSTIN JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 02-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B.SUDHEENDRA KUMAR, J.

.....
Crl.R.P.No. 802 of 2014
.....

Dated this the 2nd day of September, 2015

ORDER

The revision Petitioner is the accused in S.T. No. 1561 of 2008 on the files of the Court of the Judicial Magistrate of First Class-II, Thiruvananthapuram.

2. The trial Court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 (“the N.I. Act” for short) and sentenced him thereunder to simple imprisonment for nine months and to pay an amount of ₹ 3,00,000/- with interest at 9% per annum as compensation to the complainant under Section 357 (3) Cr.P.C. The appeal filed against the said conviction and sentence was dismissed by the

appellate court as per judgment dated 11-2-2014 in Crl.A. No. 13 of 2013.

4. The prosecution allegation is that the revision petitioner borrowed an amount of ₹3,00,000/- from the complainant/2nd respondent herein and towards the discharge of the said liability, 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 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. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

6. Before the trial court, the complainant himself got examined as PW1 and Exts. P1 to P5 were marked for the complainant. No evidence was adduced on the side of the defence. The courts below, relying on the documentary as well as oral evidence adduced by the complainant, concurrently found that the accused 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 is perverse or incorrect. In the said circumstances, I do not find any reason to interfere with the finding of the courts below that the revision petitioner committed

the offence under Sec. 138 of the N.I.Act.

6. The cheque is for Rs. 3,00,000 lakhs. The parties are close relatives. 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. 3,00,000/- to secure the ends of justice, and 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.3,00,000/-,

(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 amount, the entire amount shall be given to the complainant as compensation under Section 357 (1) (b) Cr.P.C.

The revision petitioner is granted 6 months time to comply with the direction of payment of fine in this order.

**Sd/- B.SUDHEENDRA KUMAR,
JUDGE**

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/true copy/

P.S to Judge