

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1387 of 2015 ()

AGAINST THE JUDGMENT IN CRA 583/2010 of ADDL. SESSIONS
COURT - VII, THIRUVANANTHAPURAM DATED 30-08-2014

AGAINST THE JUDGMENT IN ST 90/2007 of JMFC-V,
THIRUVANANTHAPURAM, (SPL.COURT-MARKLIST CASES)
DATED 30-06-2010

REVISION PETITIONER(S):

ABDUL RAHIM AGED 49 YEARS, S/O. MOHAMMED ABDUL KHADER,
PRESENTLY RESIDING AT "SHEE MANZIL", T.C. 36/93,
KAIRALI ROAD, PERUNTHANNI, VALLAKKADAVU P.O.,
THIRUVANANTHAPURAM - 695 008, FORMERLY RESIDENT OF MAR
VILLA, PARAVANKUNNU, 49/149 (5) AND ORIGINALLY FROM
KHADER COTTAGE, T.C. 36/1136, VALLAKKADAVU P.O.,
THIRUVANANTHAPURAM

BY ADV. SRI.MANU V.

RESPONDENT(S):

1. STATE OF KERALA, REPRESENTED BY ITS PUBLIC
PROSECUTOR AT THE HIGH COURT OF KERALA AT
ERNAKULAM - 682 031
2. MAGLIN, D/O. REETHA MARKOSE, TC. 334 /407,
THAIVILAKOM HOUSE, VETTUKADU, THIRUVANANTHAPURAM
PIN - 695 001.

BY PUBLIC PROSECUTOR SRI. V.S. SREEJITH FOR R1.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 30-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
Crl.R.P.No. 1387 of 2015
.....

Dated this the 30th day of October, 2015

ORDER

The revision petitioner is the accused in S.T. No. 90 of 2007 on the files of the court of the Judicial Magistrate of First Class-V, (Special Court for Marklist Cases), Thiruvananthapuram.

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 three months and a fine of Rs.1,40,000/- with a default clause for simple imprisonment for two months. 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 both sides.

4. The prosecution allegation is that the revision petitioner issued Ext. P1 cheque towards the discharge of the liability of the revision petitioner to the complainant. The complainant presented the said cheque for encashment. However, the same was dishonoured as the payment was stopped by the drawer. There was no sufficient fund in the account of the revision petitioner to honour the cheque. Statutory notice was issued on behalf of the complainant, which was received by the revision petitioner. However, the revision petitioner did not pay the cheque amount within the statutory period or thereafter.

5. Before the trial court, PW1 and PW2 were examined and Exts. P1 to P12 were marked for the complainant. DW1 and DW2 were examined and Exts.D1 and D2 were marked for the revision petitioner.

6. After evaluating the oral and documentary evidence adduced by the parties, the courts below concurrently found

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 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 Sec. 138 of the N.I. Act does not warrant any interference by this Court.

7. Ext. P1 cheque is for Rs. 1,40,000/-. Considering the facts and circumstances, 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. 1,40,000/- (Rupees one

lakh forty thousand only) 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 Sec. 138 of the N.I.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. 1.40,000/- (Rupees one lakh forty 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 the fine, the entire amount shall be given to the complainant as compensation under Section 357 (1)(b) Cr.P.C.

The learned counsel for the revision petitioner has submitted

that the revision petitioner had already deposited the entire amount covered by Ext. P1 cheque in execution of a decree passed by the Civil Court. If the revision petitioner had already deposited/paid the amount covered by Ext. P1 cheque in execution of a decree in respect of Ext. P1 cheque, the revision petitioner need not pay any further amount to comply with the payment of fine in this order, provided the revision petitioner produces proof in this regard before the trial court.

Dated this the 30th day of October, 2015.

Sd/-B. SUDHEENDRA KUMAR, JUDGE.

Ani/2-10-2015.

/true copy/

P.S. To Judge