

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1396 of 2015

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Crl.A 348/2011 of ADDL. SESSIONS COURT - III, MANJERI  
ST 98/2010 of J.M.F.C.-II(FOREST OFFENCES),MANJERI

REVISION PETITIONER/PETITIONER/ACCUSED:

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A.P.ASHARAF,  
S/O. HAMZA, ANAPPADIKKAL HOUSE, AMAYUR ROAD  
THRIKKALANGODE P.O., ERNAD TALUK, MALAPPURAM.

BY ADVS.SRI.NIDHI BALACHANDRAN  
SRI.SABU GEORGE

RESPONDENTS/RESPONDENTS/STATE & COMPLAINANT:

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1. STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, ERNAKULAM-682031.
  2. MUHAMMED KABEER  
S/O. ABOOBACKAR, VADAKKAYIL HOUSE, PALLIMUKKU  
POOKKOTTUR P.O., MALAPPURAM.

R2 BY ADV. SRI.T.K.AJITH KUMAR  
R2 BY ADV. SRI.P.VINODKUMAR  
R1 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION  
ON 11-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**B.SUDHEENDRA KUMAR, J.**

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Crl.R.P. No.1396 of 2015  
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Dated this the 11<sup>th</sup> day of November 2015

O R D E R

The revision petitioner is the accused in S.T.No.93 of 2010 on the files of the Court of the Judicial Magistrate of First Class - II, Manjeri.

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 four months and to pay a compensation of Rs.2,00,000/- to the complainant under Sec. 357 (3) Cr.P.C. The appeal filed against the conviction and sentence was dismissed by the appellate

court. Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

3. Heard.

4. The prosecution allegation is that the revision petitioner issued Ext.P1 cheque in favour of the complainant, towards the discharge of his liability to 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 returned as 'unclaimed', as the revision petitioner did not accept the same even after the receipt of intimation from the postal authorities. 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 P6 were marked for the complainant. No evidence was adduced on the side of the revision petitioner.

6. The courts below, relying on the documentary as well as oral 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. 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 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 by the courts below that the revision petitioner committed the offence under Section 138 of the N.I.Act.

7. The cheque is for Rs.2,00,000/-. 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 courts below can be modified and reduced to imprisonment till the rising of the court and a fine of Rs.2,00,000/- 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 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.2,00,000/-(Rupees two lakhs 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 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 six months to pay the fine amount, as requested by the learned counsel for the revision petitioner.

Sd/-

**B.SUDHEENDRA KUMAR,  
JUDGE**

*dl/11.11.2015*