

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1398 of 2015 ()

Crl.A 567/2012 of ADDL.DISTRICT & SESSIONS COURT - IV, THIRUVANANTHAPURAM
ST 1032/2008 of J.M.F.C.-II, THIRUVANANTHAPURAM

REVISION PETITIONER/APPELLANT/ACCUSED:

J.B.PRAKASH
KULIRMA T.C 36/169, EENCHAKKAL, VALLAKADAVU P.O
THIRUVANANTHAPURAM

BY ADV. SRI.SHAJIN S.HAMEED

RESPONDENTS/RESPONDENTS/STATE & COMPLAINANT:

-
1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM PIN 682 031
 2. K.G SANTHOSH KUMAR
RAJAN MANDIRAM, PALKULANGARA, PETTAH P.O
THIRUVANANTHAPURAM PIN CODE 695 024

R1 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
04-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P.No.1398 of 2015

Dated this the 4th day of November 2015

O R D E R

The revision petitioner is the accused in S.T.No.1032 of 2008 on the files of the Court of the Judicial Magistrate of First Class, Thiruvananthapuram.

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 to pay an amount of Rs.3,00,000/ with 9% interest per annum as compensation under Section 357(3) Cr.P.C. The appeal filed against the said conviction and sentence was

dismissed by the appellate court. 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 towards the discharge of 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. 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 defence.

6. The courts below, relying on the documentary as well as oral evidence adduced by the complainant, concurrently found that the revision petitioner had 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 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. The cheque amount is Rs.3,00,000/-. 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.3,00,000/- 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.3,00,000/- (Rupees three lakhs 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.

Sd/
B.SUDHEENDRA KUMAR,
JUDGE

dl/4.11.2015

// True Copy //

PA to Judge