

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1400 of 2015 ()

Crl.A 690/2005 of ADDL.SESSIONS COURT, THRISSUR
ST 174/2004 of J.M.F.C.,IRINJALAKUDA

REVISION PETITIONER/APPELLANT/ACCUSED:

HANEEFA P.S., AGED 57 YEARS
S/O.SULTHAN, PALAYAMKOTTUKARAN HOUSE, CHALAKUDY P.O.
NEAR TELEPHONE EXCHANGE, CHALAKUDY, THRISSUR DISTRICT.

BY ADV. SMT.I.VINAYAKUMARI

RESPONDENTS/RESPONDENTS/STATE/COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, 682031.

2. SHAHUL T.M.
S/O.MINAZA, THIRUNELVELLIKARAN HOUSE, P.O.PADY
KODALI, THRISSUR - 680699.

ADDL.3 SMT.MEHURUNNISA SHAHUL, AGED 58 YEARS
THIRUNELVELLIKARAN HOUSE
OMBUTHUNGAL HOUSE, MOONNUMMURY PO
THRISSUR DISTRICT 680 0020.

ADDL.4 HAZEENA AGED 36 YEARS
THIRUNELVELLIKARAN HOUSE
OMBUTHUNGAL HOUSE, MOONNUMMURY PO
THRISSUR DISTRICT 680 0020.

ADDL.5 NAJEEB, AGED 34 YEARS
THIRUNELVELLIKARAN HOUSE
OMBUTHUNGAL HOUSE, MOONNUMMURY PO
THRISSUR DISTRICT 680 0020.

ADDL.6 NAZIK, AGED 58 YEARS
THIRUNELVELLIKARAN HOUSE
OMBUTHUNGAL HOUSE, MOONNUMMURY PO
THRISSUR DISTRICT 680 0020.

ADDL7. FIROZ, AGED 31 YEARS
THIRUNELVELIKARAN HOUSE
OMBUTHUNGAL HOUSE, MOONNUMMURY PO
THRISSUR DISTRICT 680 0020.

ADDITIONAL RESPONDENTS 3 TO 7 ARE IMPEADED AS PER ORDER
DT.25/9/2015 IN CRL.M.A.5227/2015 IN CRL.M.A.4159/2015 IN
CRL.R.P.1400/2015

RADDL 3-R7 BY ADV. SRI.G.SREEKUMAR (CHELUR)
RADDL 3-R7 BY ADV. SRI.N.L.BITTO
R1 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
03-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1400 of 2015

Dated this the 3rd day of November 2015

O R D E R

The revision petitioner is the accused in S.T.No.174 of 2004 on the files of the Court of the Judicial Magistrate of First Class, Irinjalakuda.

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 two months and to pay a compensation of Rs.2,50,000/- to the complainant. In the appeal, the conviction was confirmed and the sentence of imprisonment was modified and reduced to simple

imprisonment for ten days. However, the compensation and default sentence passed by the trial court were upheld 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 the liability 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 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 P7 were marked for the complainant. DW1 and DW2 were examined for the revision petitioner.

6. The courts below, after evaluating the oral and the documentary evidence adduced by the parties, concurrently found that the revision petitioner had executed Ext.P1 cheque as contemplated under Section 138 of the N.I. Act. The defence set up by the revision petitioner through DW1 and DW2 was 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 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.2,50,000/-. 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.2,50,000/- 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.2,50,000 (Rupees two lakh fifty 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.

CrI.R.P.1400/2015

: 6 :

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/3.11.2015

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PA to Judge