

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. 1410 of 2015 ()

JUDGMENT IN Crl.A 323/2011 OF THE ADDITIONAL SESSIONS COURT- III,
MANJERI

JUDGMENT IN CC 753/2008 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT-I, PERINTHALMANNA

REVISION PETITIONER/COMPLAINANT:

ALI EDAYERATH,
S/O.EDAYERATH KUNHAPPA, THENKARA PO, MANNARKKAD
PALAKKAD DISTRICT

BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

RESPONDENTS/ACCUSED AND STATE:

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

2. MUHAMMED HAJI
S/O.MOIDEENKUTTY, MUDKKALI HOUSE, VALUR
PULAMANTHOL, PERINTHALMANNA-679322

R BY PUBLIC PROSECUTOR SRI.R.GITESH
R2 BY ADV.C.M.KAMMAPPU

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

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.1410 of 2015

Dated this the 11th day of November, 2015

ORDER

The revision petitioner is the accused in C.C.No. 753 of 2008 on the files of the Court of the Judicial Magistrate of First Class-I, Perinthalmanna.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him thereunder to simple imprisonment for three months and to pay a compensation of ₹1,60,000/- to the complainant under Section 357(3) Cr.P.C. 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.

4. The prosecution case is that the revision petitioner issued Ext.P2 cheque in favour of the complainant 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 account was closed by the revision petitioner. Statutory notice was issued on behalf of the complainant 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 to PW3 were examined and Exts.P1 to P7 were marked for the complainant. No evidence was adduced on the side of the revision petitioner.

6. After evaluating the oral and documentary evidence adduced by the complainant, the courts below concurrently found that the revision petitioner executed Ext.P2 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 Section 138 of N.I Act does not warrant any interference by this court.

7. As regards the sentence, the learned counsel for the revision petitioner has pleaded for leniency. The cheque is for an amount of ₹1,50,000/-. Considering the facts and circumstances of the case, including the amount covered by Ext.P2 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 ₹1,50,000/-, 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 Negotiable Instruments Act.

(ii) the sentence awarded by the courts below under Section 138 of the Negotiable Instruments Act stands modified and reduced to imprisonment till the rising of the court and a fine of ₹1,50,000/- (Rupees one 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 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

Scl.

True Copy

PA to Judge