

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1411 of 2015 ()

JUDGMENT IN Crl.A 156/2014 OF THE ADDITIONAL SESSIONS COURT-III,
KOZHIKODE

JUDGMENT IN C.C 568/2011 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT-III, KOZHIKODE

REVISION PETITIONER/APPELLANT/ACCUSED:

UDAYABHANU, AGED 54 YEARS,
S/O.KOYAKKAL KRISHNAN, PROPRIETOR
U BEE ENTERPRISES(SOAP UNIT), KACHERIPARA, AZHEEKODE
KANNUR DISTRICT.

BY ADVS.SRI.A.RANJITH NARAYANAN
SMT.A.SIMI
SRI.S.K.SAJU

RESPONDENT/RESPONDENT/COMPLAINANT:

1. M/S. DIAMOND SILICATE
KACHERI ROAD, CHALANNUR.P.O, KOZHIKODE
REPRESENTED BY M. PADMANABHAN NAIR
AGED AROUND 73 YEARS, S/O.LATE ACHUTHAN NAIR
MELEKALATHIL, CIVIL STATION, P.O.KOZHIKODE
REPRESENTED BY HIS POWER OF ATTORNEY.M.T.SUBRAMANIAM
AGED AROUND 71 YEARS,
ILLAPARAMBA, KARUVASSERY.P.O, KOZHIKODE.
2. STATE OF KERALA,
REPRESENTED BY THE LEARNED PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.

R1 BY ADV. SRI.VINOD SINGH CHERIYAN
R1 BY ADV. SRI.R.SUDHISH
R1 BY ADV. SRI.T.M.KHALID
R BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 16-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.1411 of 2015

Dated this the 16th day of November, 2015

ORDER

Aggrieved by the concurrent finding of conviction and sentence under Section 138 of the N.I.Act, the accused in C.C.No.568 of 2011 on the files of the Court of the Judicial Magistrate of First Class-III, Kozhikode, has filed this revision petition.

2. Heard.

3. The prosecution allegation is that the revision petitioner issued Ext.P1 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 due to the insufficiency of funds in the account of 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 pay the cheque amount within the statutory period or thereafter.

4. Before the trial court, PW1 was examined and Exts.P1 to P7 were marked for the complainant. No evidence was adduced on the side of the revision petitioner.

5. The courts below, after evaluating the oral and documentary 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. 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.

6. The cheque is for an amount of ₹49,115/-. 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 ₹50,000/- to meet 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 ₹50,000/- (Rupees fifty thousand only).

(iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for one month.

(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.

I make it clear that the payment which may be directly made to the complainant, will be treated as sufficient compliance of payment of fine in this order, provided the complainant files an affidavit in this regard before the trial court.

**Sd/-
B. SUDHEENDRA KUMAR
JUDGE**

Sc/16.11.2015

True Copy

PA to Judge