

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. 1419 of 2015 ()

Crl.A 419/2011 of ADDL. SESSIONS COURT - III, MANJERI
CC 288/2008 of J.F.C.M-I,MANJERI

REVISION PETITIONER/ APPELLANT /ACCUSED:

N.MAJEED
S/O MOIDEENKUTTY, NEELENGADAN HOUSE, POONGOD DESOM
VELLAYUR P.O, AND AMSOM, MALAPPURAM DISTRICT

BY ADV. SRI.ANIL KUMAR M.SIVARAMAN

RESPONDENTS/ STATE & COMPLAINANT:

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1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM 682031
 2. SATHIYAJITH,
SREEBHAVANAM, KOLAPPARAMABU P.O, ERNAD TALUK
MALAPPURAM DISTRICT 676521

R2 BY ADV. SRI.C.CHANDRASEKHARAN
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.1419 of 2015

Dated this the 4th day of November 2015

ORDER

The revision petitioner is the accused in C.C.No.288 of 2008 on the files of the Court of the Judicial Magistrate of First Class -1, Manjeri.

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 a fine of Rs.1,09,000/- with a default clause for simple imprisonment for three months. 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 case of the complainant is that towards the discharge of the 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 P5 were marked for the complainant. Exts.D1 to D3 were marked for the revision petitioner.

6. The courts below, relying on the documentary as well as oral 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. 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.1,00,000/-.

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 a fine of Rs.1,00,000/- 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 a fine of Rs.1,00,000 (Rupees one lakh 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.

I make it clear that the payment, which may be directly made to the complainant, will be treated as sufficient compliance of the payment of fine as per this order. The learned counsel for the 2nd respondent has submitted that the 2nd respondent has already received the amount covered by Ext.P1 cheque from the revision petitioner. An endorsement in this regard has been also made by the learned counsel for the 2nd respondent. In view of the above submission and endorsement by the learned counsel for the 2nd respondent, the revision petitioner need not pay any further amount to comply with the direction of payment of fine in this order.

Sd/-

**B.SUDHEENDRA KUMAR,
JUDGE**

dl/4.11.2015