

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. 1421 of 2015 ()

Crl.A 83/2010 of ADDITIONAL DISTRICT DISTRICT& SESSIONS COURT (ADHOC)-1,
PATHANAMTHITTA
CC 933/2004 of J.M.F.C.,THIRUVALLA

REVISION PETITIONER/APPELLANT/ACCUSED:

P.S. GANESH,
M/S. ALANKAR JEWELLERS, 1ST FLOOR, ALANKAR JEWEL PLAZA
SCS JUNCTION, THIRUVALLA, PATHANAMTHITTA DISTRICT

BY ADV. SRI.C.S.MANU

RESPONDENTS/RESPONDENTS/STATE AND COMPLAINANT:

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1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM PIN 682 018
 2. UMMEN GEORGE
KAIYYALAYKAKATHU HOUSE, PANDANADU NORTH
CHENGANNOOR THALUK - 689524

R1 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 04-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1421 of 2015

Dated this the 4th day of November 2015

O R D E R

The revision petitioner is the accused in C.C.No.933 of 2004 on the files of the Court of the Judicial Magistrate of First Class, Thiruvalla.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 (“the N.I.Act” for short) and sentenced him thereunder to simple imprisonment for two months and to pay a compensation of Rs.1,00,000/- under Sec.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 allegation is that the revision petitioner issued Ext.P7 cheque in favour of the complainant towards the discharge of the liability to 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. This case was tried along with C.C. No.934 of 2004 and a common judgment was passed by the trial court.

6. Before the trial court, PW1 and PW2 were examined and Exts.P1 to P13 were marked for the complainant. No evidence was adduced from the side of the revision petitioner.

7. The courts below, relying on the documentary as well as oral evidence adduced by the revision petitioner, concurrently found that the revision petitioner had executed Ext.P7 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 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 by the courts below that the revision petitioner committed the offence under Section 138 of the N.I.Act.

8. The cheque is for Rs.1,00,000/-. Considering the facts and circumstances of the case, including the amount covered by Ext.P7 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.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 imprisonment till the rising of the court and 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.

The revision petitioner is granted six months to pay the fine amount, as requested by the learned counsel for the revision petitioner.

Sd/-
B.SUDHEENDRA KUMAR,
JUDGE

dl/6.11.2015

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PA to Judge