

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. 1426 of 2015 ()

AGAINST THE JUDGMENT IN CRL.A. 413/2010 of ADDL.DISTRICT
AND SESSIONS COURT, VADAKARA DATED 27-12-2011

AGAINST THE JUDGMENT IN ST 1716/2007 of J.M.F.C., VADAKARA
DATED 16-6-2010

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

MAYADEVI, W/O. AJITHKUMAR,
ATHIRA NIVAS, AROOR, CHERTHALA
ALAPPUZHA DISTRICT

BY ADV. SMT.NIMA JACOB

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

1. MAHINDRA & MAHINDRA FINANCIAL SERVICE LTD.
REP.BY MANAGER, VATAKARA BRANCH, VATAKARA - 673 101.

2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA ERNAKULAM - 31

R1 BY ADV. SRI.DEVAPRASANTH.P.J.
BY PUBLIC PROSECUTOR SRI.R. GITHESH

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.

.....
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.....

Dated this the 4th day of November, 2015

ORDER

The revision petitioner is the accused in S.T. No. 1716 of 2007 on the files of the court of the Judicial Magistrate of First Class – I, Vatakara.

2. The trial Court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to simple imprisonment for six months and to pay compensation of Rs. Rs. 1,30,000/- to the complainant under Section 357 (3) Cr.P.C. In the appeal, the conviction was confirmed and the sentence was modified and reduced to a fine of Rs. 1,35,000/- with a default clause for simple imprisonment for three months. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard both sides.

4. The prosecution allegation is that the revision petitioner

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issued Ext. P2 cheque 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 insufficiency of funds in the account of the revision petitioner. Statutory notice was issued on behalf of the complainant, which was received by the revision petitioner. However, the revision petitioner did not pay 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. No defence 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

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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 Sec. 138 of the N.I.Act does not warrant any interference by this Court.

7. Ext. P2 cheque is for an amount of Rs. 1,28,000/-. Considering the facts and circumstances, 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 Rs. 1,28,000/- (Rupees one lakh twenty eight thousand only) to secure the ends of justice and accordingly, I order so.

In the result, this Revision Petition stands allowed in part.

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i) confirming the verdict of guilty and conviction passed by the courts below under Sec. 138 of the N.I.Act.

ii) the sentence awarded by the courts below stands modified and reduced to imprisonment till the rising of the court and a fine of Rs. 1,28,000/- (Rupees one lakh twenty eight 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 amount, the entire amount shall be given as compensation to the complainant under Sec. 357 (1) (b) Cr.P.C.

The revision petitioner is granted four months to pay the fine.

Dated this the 4th day of October, 2015.

Sd/- B. SUDHEENDRA KUMAR, JUDGE.

Ani/6/11/205

/true copy/

P.S. To Judge