

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

Cr1.Rev.Pet.No. 1432 of 2015 (D)

JUDGMENT IN Cr1.A 444/2002 OF ADDITIONAL SESSIONS COURT (ADHOC), FAST
TRACK COURT NO.1, THRISSUR

JUDGMENT IN CC 948/1999 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT-III, THRISSUR

REVISION PETITIONER/APPELLANT/ACCUSED:

P.A.JACOB, S/O. LATE ANTHAPPAN,
PAZHAPPULLY HOUSE, P.O. CHEROOR,
THRISSUR - 680 008.

BY ADV. SRI.T.P.PANKAJAKSHAN

RESPONDENTS/RESPONDENTS/COMPLAINANT:

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1. M.T.RAMU, S/O. THAMI,
MANDALATH HOUSE, P.O. MAROTICHAL,
THRISSUR.
 2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R BY PUBLIC PROSECUTOR SRI.R.GITESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 12-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.1432 of 2015

Dated this the 12th day of November, 2015

ORDER

The revision petitioner is the accused in C.C.No.948 of 1999 on the files of the Court of the Judicial Magistrate of First Class-III, Thrissur.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him thereunder to simple imprisonment for one month and to pay a compensation of ₹21,000/- 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 allegation 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 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.

5. 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.

6. 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.

7. The cheque is for an amount of ₹21,000/-. 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 ₹21,000/- 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 a fine of ₹21,000/- (Rupees twenty one thousand only).

(iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for 21 days.

(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.

Sd/-
B. SUDHEENDRA KUMAR
JUDGE

Scl/12.11.2015

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PA to Judge