

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

Crl.Rev.Pet.No. 1434 of 2015 ()

JUDGMENT IN CrI.A 260/2014 OF THE ADDITIONAL SESSIONS COURT - IV,
KOZHIKODE

JUDGMENT IN ST 471/2013 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
NADAPURAM

REVISION PETITIONER/APPELLANT/ACCUSED:

KUNHALAN MANSOOR K.K., AGED 37 YEARS
S/O.KUNHALAN MOIDU, KOTHAN KOTTUMMAL HOUSE, KUTTIADI
VATAKARA TALUK, KOZHIKODE-673508.

BY ADV. SRI.M.R.JAYAPRASAD

RESPONDENTS/RESPONDENTS/STATE & COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682031.
2. ASLAM, AGED 32 YEARS
S/O.MOIDU HAJI, KOTTOTHUMMAL HOUSE, MARUTHOMKARA
KAVILAMPARA AMSOM AND DESOM OF VATAKARA TALUK
KOZHIKODE-673513.

R2 BY ADV. SRI.SUNNY MATHEW
R BY PUBLIC PROSECUTOR SRI.R.GITESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 13-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.1434 of 2015

Dated this the 13th day of November, 2015

ORDER

The revision petitioner is the accused in S.T.No.471 of 2013 on the files of the Court of the Judicial Magistrate of First Class, Nadapuram.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him thereunder to imprisonment till the rising of the court and a fine of ₹1,07,000/-. 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 the learned counsel for the petitioner.

4. The prosecution allegation is that towards the discharge of the liability to the complainant, 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 P5 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. As regards the sentence, the learned counsel for the revision petitioner has pleaded for leniency. The cheque is for an amount of ₹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 imprisonment till the rising of the court and a fine of ₹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 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 ₹1,00,000/- (Rupees one lakh only).

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

(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 court executing the decree, if any, in the civil case shall take note of the amount of compensation awarded and received in this case before executing the decree. I further make it clear that the amount if any deposited by the revision petitioner in connection with this case, will be treated as part payment of the deposit of fine as per this order. The revision petitioner is granted four months to deposit the fine.

**B. SUDHEENDRA KUMAR
JUDGE**