

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1445 of 2015 ()

CRA 129/2003 OF THE ADDITIONAL SESSIONS COURT, FAST TRACK COURT-III,
THIRUVANANTHAPURAM

ST 269/1998 OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT,
THIRUVANANTHAPURAM

REVISION PETITIONER/APPELLANT/ACCUSED:

M. SHAKEERKHAN, S/O. M.MOIDEENKANNU,
T.C.13/574, KALA VIHAR NAGAR,
KUNNUKUZHI, THIRUVANANTHAPURAM

BY ADV. SRI.BIJU .C. ABRAHAM

RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE:

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1. HARIHARAN, MANAGER, M/S. VIKAS HIRE PURCHASE
CO. (P) LTD, RAJESWARI BUILDING, ATTARA COMPLEX,
CENTRAL THEATRE ROAD, PAZHAVANGADI,
THIRUVANANTHAPURAM - 695 014.
 2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM- 682 031.

R1 BY ADV. SRI.G.SREEKUMAR (CHELUR)
R2 BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

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

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.1445 of 2015

Dated this the 11th day of November, 2015

ORDER

The revision petitioner is the accused in S.T.No.269 of 1998 on the files of the Court of the Additional Chief Judicial Magistrate, Thiruvananthapuram.

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 a fine of ₹1,000/-. In the appeal, the conviction was confirmed and the sentence was modified to simple imprisonment for one month. 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 issued Ext.P1 cheque in favour of the complainant 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 the insufficiency of funds in the account of the revision petitioner. Statutory notice was issued on behalf of the complainant, which was returned as unserved as the revision petitioner refused to accept the same even after the receipt of intimation from the postal authorities. 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. As regards the sentence, the learned counsel for the revision petitioner has pleaded for leniency. The amount covered by Ext.P1 cheque is ₹30,887.40/-. 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 appellate court can be modified and reduced to imprisonment till the rising of the court and a fine of ₹31,000/- to meet 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 ₹31,000/- (Rupees thirty one thousand only).

(iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for 20 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.

The revision petitioner is granted four months to deposit the fine before the trial court.

Sd/-

**B. SUDHEENDRA KUMAR
JUDGE**

Scl/11.11.2015

True Copy

PA to Judge