

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1459 of 2015 ()

CRL.A 692/2014 of 1ST ADDL.SESIONS COURT, KOZHIKODE
CC 279/2013 of J.M.F.C.-II,THAMARASSERY

REVISION PETITIONER/APPELLANT/ACCUSED:

JYOTHI V.P.,
S/O.ACHUTHAN, VENGALATHUPURAYIL HOUSE
CHATHAMANGALAM P.O., KOZHIKODE DISTRICT.

BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN

RESPONDENTS/RESPONDENT/COMPLAINANT:

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1. KERALA STATE FINANCIAL ENTERPRISES LTD.
THIRUVAMBADY BRANCH
KOZHIKODE DISTRICT.REP. BY ITS MANAGER
SHYLAJA - 673 603.
 2. STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM - 682 031.

R1 BY ADV. SRI.LAL GEORGE, SC, KSFE LTD
R2 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 16-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1459 of 2015

Dated this the 16th day of November 2015

O R D E R

The revision petitioner is the accused in C.C.No.279 of 2013 on the files of the Court of the Judicial Magistrate of First Class-II, Thamarassery.

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 six months and to pay a fine of Rs.61,750/-. In the appeal, the conviction was confirmed and the sentence was modified and reduced to imprisonment till the rising of the court and a fine of

Rs.65,000/-. 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.P1 cheque in favour of the complainant towards the discharge of the liability. 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 not accepted by the revision petitioner even after getting intimation from the postal authorities. Thereafter, the same was returned as 'unserved'. However, the revision petitioner did not make payment of the cheque amount

within the statutory period or thereafter.

5. Before the trial court, PW1 was examined and Exts.P1 to P8 were marked for the complainant. No evidence was adduced on the side of the revision petitioner.

6. The courts below, relying on the documentary as well as oral 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. 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.

7. The cheque is for Rs.52,672/-. 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 Rs.55,000/- 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.55,000/-(Rupees fifty five thousand only)
- (iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for one month.
- (iv) in the event of realisation of the fine amount, the entire amount shall be given to the complainant as

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compensation under Section 357(1) (b)
Cr.P.C.

The revision petitioner is granted six months to pay
the fine amount.

Sd/-

**B.SUDHEENDRA KUMAR,
JUDGE**

dl/18.11.2015

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PA to Judge