

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1467 of 2015 ()

Crl.A 394/2013 OF THE ADDITIONAL SESSIONS COURT-I, KOTTAYAM
ST 88/2013 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, VAIKOM

REVISION PETITIONERS/APPELLANT/ACCUSED NOS.1 -2:

1. K.V.JACOB VARKEY, AGED 44 YEARS
S/O.VARKEY, KURYANTHADATHIL HOUSE, KATTAMPAKKU KARA
NJEEZHOO VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT
2. TESSY JACOB, AGED 41 YEARS
W/O.VARKEY JACOB, KURYANTHADATHIL HOUSE
KATTAMPAKKU KARA, NJEEZHOO VILLAGE, VAIKOM TALUK
KOTTAYAM DISTRICT

BY ADV. SRI.K.SUNILKUMAR

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:

1. V.V.JOSE
S/O.VARGHESE, VADAKKEKUTTY HOUSE, K S PURAM KARA
KADUTHURUTHY VILLAGE, VAIKOM TALUK,
KOTTAYAM DISTRICT - 686001.
2. STATE OF KERALA
REP BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM-682 031.

R1 BY ADV. SRI.V.G.ARUN

R1 BY ADV. SRI.T.R.HARIKUMAR

R BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 19-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.1467 of 2015

Dated this the 19th day of November, 2015.

ORDER

The accused persons in S.T.No.88 of 2013 on the files of the Court of the Judicial Magistrate of First Class-II, Vaikom, have filed this revision petition challenging the concurrent finding of conviction and sentence passed by the courts below under Section 138 of the N.I.Act.

3. Heard.

4. The prosecution allegation is that in connection with an agreement for sale executed between the complainant and the accused, the accused owed money to the complainant. Towards the discharge of the said liability, the accused issued Ext.P1 cheque in favour of the complainant. However, the same was dishonoured when presented for encashment, due to insufficiency of funds in the account of the revision petitioners. Statutory notice was issued to the revision

petitioners, which was received by the revision petitioners. However, the revision petitioners 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 petitioners.

6. The courts below appreciated the oral and documentary evidence adduced by the complainant and concurrently found that the revision petitioners executed Ext.P1 cheque as contemplated under Section 138 of the N.I.Act and committed the offence under Section 138 of the N.I Act, rejecting the contentions set up by the defence. Since there is concurrent finding on facts, this Court will not interfere with the same, as no circumstance has been brought to my notice to indicate that the appreciation of evidence or concurrent finding by the courts below is perverse or incorrect. In the said circumstances, the concurrent finding by the courts below that the revision petitioners 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 petitioners has pleaded for leniency. The amount covered by Ext.P1 cheque is Rs.15 lakhs. The revision petitioners are husband and wife. 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 a fine of Rs.7,50,000/- each, 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 Rs.7,50,000/-(Rupees Seven Lakhs Fifty

Thousand only) each.

(iii) in default of payment of fine, each of the revision petitioners shall undergo simple imprisonment for two months each.

(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 petitioners are granted six months to pay the fine as requested by the learned counsel for the revision petitioners.

Sd/-

**B. SUDHEENDRA KUMAR
JUDGE**

Sc/19.11.2015

True Copy

PA to Judge