

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. 1485 of 2015 ()

Crl.A 694/2014 OF THE ADDITIONAL SESSIONS COURT-II, KOZHIKODE

CC 776/2011 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT-II, THAMARASSERY

REVISION PETITIONER/APPELLANT/ACCUSED:

BABURAJ, S/O.APPU
KAMBALATH HOUSE, NAYARKUZHI P.O
KOZHIKODE.

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

RESPONDENTS/RESPONDENTS/COMPLAINANT:

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1. KERALA STATE FINANCIAL ENTERPRISES LTD.,
MUKKOM BRANCH, REP.BY MANAGER SUNNY JOSEPH K, 673 602.
 2. STATE OF KERALA, REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

R1 BY ADV. SRI.LAL GEORGE, SC, KERALA STATE FINANCIAL
ENTERPRISES LTD.

R2 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.1485 of 2015

Dated this the 19th day of November, 2015

ORDER

The accused in C.C.No.776 of 2011 on the files of the Court of the Judicial Magistrate of First Class-II, Thalassery has filed this revision petition, challenging the concurrent finding of conviction and sentence passed by the courts below under Section 138 of N.I.Act.

2. Heard.

3. The prosecution allegation is that towards the discharge of the amount due 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.

4. Before the trial court, PW1 to PW5 were examined and Exts.P1 to P16 were marked for the complainant. DW1 was examined and Ext.D1 was marked for the revision petitioner.

5. The courts below, thoroughly appreciated the oral and documentary evidence adduced by the parties and concurrently found that the revision petitioner 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 defence set up by the revision petitioner. Since there is concurrent finding by the courts below, this Court will not interfere with the same, particularly when no circumstance has been brought to my notice to indicate that the appreciation of evidence or 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.

6. As regards the sentence, the learned counsel for the revision petitioner has pleaded for leniency. The amount covered by Ext.P1 cheque is Rs.67,516/-. 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 Rs.70,000/- 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 Rs.70,000/-(Rupees Seventy Thousand only).

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

The revision petitioner is granted six months to pay the fine as requested by the learned counsel for the revision petitioner.

Sd/-

**B. SUDHEENDRA KUMAR
JUDGE**

Scl/19.11.2015

True Copy

PA to Judge