

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1492 of 2015 ()

Cr1.A 14/2011 OF THE SESSIONS COURT, MANJERI
CC 1194/2006 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, MALAPPURAM

REVISION PETITIONER/APPELLANT/ACCUSED:

THACHARAMBAN MOIDEEN AHAMMED, AGED 42 YEARS,
S/O.MOIDEEN, THACHARAMBAN HOUSE, INDIANUR P.O.
KOTTAKKAL VIA., MALAPPURAM DISTRICT.

BY ADVS.SRI.K.RAKESH
SMT.K.REMADEVI

RESPONDENTS/STATE AND COMPLAINANT:

1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM, KOCHI.
2. THAYYIL ABOOBACKER, S/O.MOHAMMED,
THAYYIL HOUSE, THOZHUVANNOOR AMSOM, DESOM,
VALANCHERY VIA, MALAPPURAM DISTRICT, PIN- 676 552.

R1 BY PUBLIC PROSECUTOR SRI.R.GITESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 20-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No. 1492 of 2015

Dated this the 20th day of November, 2015

ORDER

The accused in C.C.No.1194 of 2006 on the files of the Court of the Judicial Magistrate of First Class, Malappuram has 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.

2. Heard.

3. The prosecution allegation is that towards the partial discharge of the liability to the complainant in connection with a loan transaction, 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, which was received by the revision petitioner.

5. Before the trial court, PW1 to PW3 were 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 and committed the offence under Section 138 of the N.I Act, repelling the contentions of the revision petitioner. Since there is concurrent finding on facts, this Court will not interfere with the same, as there is nothing on record 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. The amount covered by the cheque is ₹25,000/-. 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 appellate court can be modified and reduced to imprisonment till the rising of the court and a fine of ₹30,000/- to meet the ends of justice. Accordingly, I order so. In default of payment of fine, the revision petitioner shall undergo simple imprisonment for twenty days. 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.

In the result, this revision petition stands allowed in part as above.

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/20.11.2015

True Copy

PA to Judge