

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. 1497 of 2015 ()

Crl.A 595/2007 of SESSIONS COURT, PALAKKAD
ST 1539/2005 of J.M.F.C.-III,PALAKKAD

REVISION PETITIONER/APPELLANT/ACCUSED:

ABDUL RASAK, AGED 65 YEARS
S/O.N.K.KADER 15/256, KARUVANDODU
VALLIKKODE P.O., PUDUPPARIYARAM, PALAKKAD DISTRICT.

BY ADVS.SRI.A.R.GANGADAS
SRI.M.L.SURESH KUMAR

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

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1. K.A.SUNIL KUMAR
S/O.APPU, VADAKKEMURI, KANNADI P.O.
PALAKKAD DISTRICT - 678 701
 2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA - 682 031.

R1 BY ADV. SRI.RAJESH SIVARAMANKUTTY
R2 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
19-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1497 of 2015

Dated this the 19th day of November 2015

ORDER

The accused in S.T.No.1539 of 2005 on the files of the Court of the Judicial Magistrate of First Class - III, Palakkad has filed this revision petition challenging the concurrent finding of conviction and sentence passed by the courts below under Section 138 of the Negotiable Instruments Act (for short 'the N.I. Act)

2. Heard.

3. The prosecution allegation is that the revision petitioner issued Ext.P1 cheque in favour of the complainant towards the discharge of his liability to the complainant. 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 returned as 'unserved' as the revision petitioner did not accept the same even after getting intimation from the postal authorities. However, the revision petitioner did not make payment of the cheque amount within the statutory period or thereafter.

4. Before the trial court, PW1 was examined and Exts.P1 to P5 were marked for the complainant. Ext.D1 was marked for the revision petitioner.

5. The courts below, relying on the documentary as well as the 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. The defence set up by the revision petitioner was 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 appreciation of evidence by the courts below was 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 the N.I. Act, does not warrant any interference by this Court.

6. The cheque is for Rs.50,000/-. 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 courts below can be modified and

reduced to imprisonment till the rising of the court and a fine of Rs.50,000/- 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.50,000/-(Rupees fifteen 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 compensation under Section 357(1) (b) Cr.P.C.

The revision petitioner is granted two months to pay the fine.

Sd/-
B.SUDHEENDRA KUMAR,
JUDGE

dl/20.11.2015

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PA to Judge