

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. 1498 of 2015 ()

AGAINST THE JUDGMENT IN CRL.A. 527/2009 of ADDL.SESIONS
JUDGE, FAST TRACK COURT-I, ALAPPUZHA, DATED 17-08-2010

AGAINST THE JUDGMENT IN CC 174/2009 of J.M.F.C.-II (MOBILE),
ALAPPUZHA DATED 31-10-2009

REVISION PETITIONER(S):

BINU. K, AGED 38 YEARS,
S/O. KRISHNAN,
SARPAKANDATHIL VEEDU,
WEST OF EVERGREEN TOURIST HOME,
THATHAMPALLY P.O., ALAPPUZHA

BY ADVS.SRI.S.SHANAVAS KHAN
SMT.S.INDU

RESPONDENT(S):

1. ANILKUMAR, VALAPPIL HOUSE,
THIRUVAMPADY POST, ALAPPUZHA - 2
2. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM

ADV. SRI.P.SHANES METHAR FOR R1
PUBLIC PROSECUTOR R. GITESH FOR R2

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. 1498 of 2015
.....

Dated this the 19th day of November, 2015

ORDER

The accused in C.C. No. 174 of 2009 on the files of the Court of the Judicial Magistrate of First Class-II, Alappuzha 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, 1981.

2. Heard both sides.

3. The case of the complainant is that the revision petitioner issued Ext. P1 cheque in favour of the complainant towards the discharge of the liability of the revision petitioner to the complainant . The said cheque was dishonored when presented for encashment. Statutory notice was issued. The revision petitioner did not accept the notice even after the receipt of intimation from the postal authorities and hence, the same was returned as 'unclaimed'. The revision petitioner did

not pay 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. No evidence was adduced on the side of the revision petitioner.

5. The courts below thoroughly appreciated the oral and documentary evidence adduced by the complainant 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 contentions of the revision petitioner. Since there is concurrent finding, this Court will not interfere with the same as no circumstance has been brought to the notice of this Court to show 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 Sec. 138 of the N.I. Act, does not warrant any interference by this

Court. The amount covered by Ext. P1 cheque is Rs. 40,000/-. 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. 43,000/- (Rupees forty three thousand only) to meet the ends of justice, and 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. 43,000/- (Rupees forty three 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 amount.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

ani/ 20/11/2015

/true copy/

P.S. To Judge