

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

SATURDAY, THE 21ST DAY OF NOVEMBER 2015/30TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1508 of 2015 ()

Crl.A 262/2011 OF THE SPECIAL COURT FOR SC/ST (POA) ACT CASES,
MANJERI

ST 376/2009 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT-II, PERINTHALMANNA

REVISION PETITIONER/APPELLANT/ACCUSED:

NADAKKAVIL RAFEEQUE @ ABDUL RAFEEQUE
S/O. MOHAMMED, NADAKKAVIL HOUSE,
VALANCHERY P.O., TIRUR TALUK
MALAPPURAM DISTRICT.

BY ADVS.SRI.P.VENUGOPAL (1086/92)
SMT.T.J.MARIA GORETTI

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

1. NOUSHAD P., S/O. SAIDU MOHAMMED
PALARA HOUSE, KOLAMANGALAM
VALACHERY P.O, TIRUR TALUK
MALAPPURAM DISTRICT - PIN 676 552.
2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSEUCTOR, HIGH COURT OF KERALA
ERNAKULAM - 682 031.

R2 BY PUBLIC PROSECUTOR SRI.R.GITESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 21-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.1508 of 2015

Dated this the 21st day of November, 2015.

ORDER

The accused in S.T.No.376 of 2009 on the files of the Court of the Judicial Magistrate of First Class-II, Perinthalmanna 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 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 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 received by the revision petitioner. However, the revision petitioner did not pay the cheque

amount within the statutory period or thereafter.

5. Before the trial court, PW1 and PW2 were examined and Exts.P1 to P5 were marked for the complainant. No evidence was adduced on the side of the revision petitioner.

6. The courts below correctly evaluated the oral and documentary evidence and 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. No circumstance has been brought to my notice 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. Ext.P1 cheque is for ₹2,50,000/-. 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 under Section 138 of the N.I.Act

can be modified and reduced to imprisonment till the rising of the court and a fine of ₹2,50,000/- with a default clause for simple imprisonment for three months to secure the ends of justice and accordingly, I order so. 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/21.11.2015

True Copy

PA to Judge