

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

Crl.Rev.Pet.No. 1516 of 2015 ()

AGAINST THE JUDGMENT IN Crl.A. 231/2014 of ADDL.DISTRICT &
SESSIONS COURT, NORTH PARAVUR, DATED 31-08-2015

AGAINST THE JUDGMENT IN CC 903/2011 of J.M.F.C.-I, ALUVA
DATED 4-4-2014

REVISION PETITIONER(S):

VIJAYARAGHAVA KURUP, AGED 63 YEARS,
NIRMALYAM, WEST MULANKANDAN TEMPLE,
THIRUVALLAPURAM P.O., KOLLAM -12

BY ADVS.SMT.K.S.SUMITHA
SMT.M.M.JASMIN

RESPONDENT(S):

1. K.C. THOMAS, S/O. CHACKO,
PROPRIETOR, CHAVARA PIPE INDUSTRIES
MUPPATHADAM, ALUVA, CHAVARA HOUSE,
THOTTAKKATTUKARA, ALUVA, ERNAKULAM - 673 101
2. STATE OF KERALA, REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM - 31

BY PUBLIC PROSECUTOR SRI. R. GITHESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 23-11-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
Crl.R.P. No. 1516 of 2015
.....

Dated this the 23rd day of November, 2015

ORDER

The accused in C.C. No. 903 of 2011 on the files of the Court of the Judicial Magistrate of First Class-I, Aluva 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, 1981.

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 which was accepted by the revision petitioner.

4. Before the trial Court, PW1 was examined and Exts. P1 to P8 were marked for the complainant. No evidence was adduced on the side of the revision petitioner.

5. The courts below correctly evaluated 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, repelling the contentions of the revision petitioner. Since there is concurrent finding on facts, this Court will not interfere with the same particularly when there is nothing on record 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 Sec. 138 of the N.I. Act, does not warrant any interference by this Court.

6. The amount covered by Ext. P1 cheque is ₹ 1,01,467/-. 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 ₹ 1,01,467/- (Rupees one lakh one thousand four hundred and sixty seven only) to meet the ends of

justice, and accordingly, I order so. In default of payment of fine, the revision petitioner shall undergo simple imprisonment for one month. 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.

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

I make it clear that if the revision petitioner had already deposited any amount before the trial court in connection with this case, the said amount will be treated as deposit/part deposit of fine ordered by this Court. If the revision petitioner had already deposited any amount exceeding the amount of fine ordered above, the revision petitioner shall be at liberty to withdraw the excess amount from the trial court.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

ani/ 23/11/2015

/true copy/

P.S. To Judge