

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 1542 of 2015 ()

Crl.A 255/2014 OF THE ADDITIONAL SESSIONS COURT, NORTH PARAVUR

ST 116/2012 OF THE JUDICIAL MAGISTRATE OF FIRST CLASS-II, NORTH
PARAVUR

REVISION PETITIONER(S) /APPELLANT/ACCUSED:

NITHIN.M.N, AGED 28 YEARS
S/O. NARAYANAN, MANGATTU HOUSE, CHITTATTUKARA
VADAKKEKARA P.O.

BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY

RESPONDENT(S) /COMPLAINANT/STATE:

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1. STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM - 682 031.
 2. ABY K.P, AGED 35 YEARS
S/O. POULOSE, KALATHIL HOUSE, CHURCH AVENUE ROAD
PERUMPADANNA, N. PARAVUR.

R1 BY GOVERNMENT PLEADER SRI.R.GITESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 26-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.1542 of 2015

Dated this the 26th day of November, 2015

ORDER

The accused in S.T.No.116 of 2012 on the files of the Court of the Judicial Magistrate of First Class-II, North Paravur 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 the learned counsel for the petitioner.

3. The prosecution allegation is that the revision petitioner issued Ext.P2 cheque in favour of the complainant towards the discharge of the liability of the revision petitioner to the complainant. The said cheque was dishonoured due to insufficiency of funds in the account of the revision petitioner, when presented for encashment. Statutory notice was returned as "unclaimed" as the revision petitioner refused to accept the same even after the receipt of intimation from the

postal authorities.

4. Before the trial court, PW1 and PW2 were examined and Exts.P1 to P7 were marked for the complainant. DW1 was examined for the revision petitioner.

5. The courts below correctly appreciated the oral and documentary evidence adduced by the parties and concurrently found that the revision petitioner executed Ext.P2 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. No circumstance has been brought to the notice of this Court to indicate that the appreciation of evidence or 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.

6. The amount covered by Ext.P2 cheque is ₹1,00,000/-. Considering the facts and circumstances of the

case, including the amount covered by Ext.P2 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 ₹1,00,000/- 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 two months. 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.

However, 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/26.11.2015

True Copy

PA to Judge