

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

Crl.Rev.Pet.No. 2774 of 2010 ()

CRL.A 455/2009 of ADDL.SESIONS COURT-I,MAVELIKKARA
ST 277/2008 of J.M.F.C. - II, MAVELIKKARA

REVISION PETITIONER/APPELLANT/ACCUSED:

V.V.UDAYAKUMAR,S/O.VISWAMBHARAN,
VISWA SADANAM VEEDU, PALAMEL MURI, NOORANAD.

BY ADVS.SRI.M.V.THAMBAN
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN
SMT.REVATHY P.NAIR

RESPONDENTS/RESPONDENTS/STATE & COMPLAINANT:

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1. THE STATE OF KERALA,REP.BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.
 2. KARTHIYANI AMMA,KUTTIYIL VADAKKETHIL,
THATHAMMUNNA MURI, NOORNAD VILLAGE, PADANILAM PO
ALAPPUZHA DISTRICT.

R2 BY ADV. SRI.A.SHAFAEEK (KAYAMKULAM)
R1 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
27-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.2774 of 2010

Dated this the 27th day of October 2015

O R D E R

The revision petitioner is the accused in S.T.No.277 of 2008 on the files of the Court of the Judicial Magistrate of First Class - II, Mavelikkara.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 (“the N.I.Act” for short) and sentenced him thereunder to simple imprisonment for three months and to pay compensation of Rs.1,05,000/- to the complainant under Sec. 357 (3) Cr.P.C. In the appeal filed against the said conviction and sentence, the conviction was confirmed and

the sentence was modified and reduced to imprisonment till the rising of the court and a compensation of Rs.1,05,000/- under section 357(3) Cr.P.C. Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

3. Heard both sides.

4. The prosecution allegation is that in order to discharge the liability of the revision petitioner to the complainant, the revision petitioner issued Exts.P1 and P2 cheques in favour of the complainant. The complainant presented the said cheques 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

“unclaimed” as the revision petitioner refused to 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.

5. Before the trial court, PW1 was examined and Exts.P1 to P8 were marked for the complainant. Ext.D1 was marked for the revision petitioner.

6. The courts below, after evaluating the oral and documentary evidence adduced by the parties, concurrently found that the revision petitioner had executed Exts.P1 and P2 cheques 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. The courts below found the revision petitioner guilty under Section 138 of the N.I.Act and convicted him thereunder. Having gone through the relevant inputs, I do not find any reason to interfere with the finding of the courts below that the revision petitioner committed the offence under Section 138 of the N.I.Act.

7. The cheques are for Rs.50,000/- each. Considering the facts and circumstances of the case, including the amount covered by Exts.P1 and P2 cheques, I

am of the view that the sentence awarded by the courts below can be modified and reduced to a fine of Rs.1,00,000/- 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 a fine of Rs.1,00,000/- (Rs.one lakh only),
- (iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for two months,
- (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 four months to pay the fine, as requested by the learned counsel for the revision petitioner.

The 2nd respondent shall be at liberty to withdraw the amount, if any, deposited by the revision petitioner before the trial court, pursuant to the direction of this court, on filing application in this regard before the trial court.

Sd/

**B.SUDHEENDRA KUMAR,
JUDGE**

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PA to Judge