

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

Crl.Rev.Pet.No. 1065 of 2014 ()

CRA 212/2012 of ADDITIONAL SESSIONS COURT,, KOTTAYAM
ST 52/2011 of J.M.F.C. IV, KOTTAYAM

REVISION PETITIONER/APPELLANT/ACCUSED:

ANISH.A.S.
S/O.SOMAN, ANISH BHAVAN, KOKKOTHODU P.O.
ARUVAPPULAM VILLAGE, KONNI, KOZHENCHERRY TALUK
PATHANAMTHITTA DISTRICT.

BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:

-
1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM
 2. SAJI JOHN
D/O.VARGHESE, SAJAN VILLA, MARIATHURUTHU P.O.
AYMANAM, KOTTAYAM - 686 006.

R2 BY ADV. SRI.JACOB E SIMON
R1 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 07-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P.No.1065 of 2014

Dated this the 7th day of September 2015

ORDER

The revision petitioner is the accused in S.T.No.52 of 2011 on the files of the Court of the Judicial Magistrate of First Class-IV, Kottayam.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I.Act') and sentenced him thereunder to simple imprisonment for three months and to pay a compensation of Rs.18,000/- to the complainant under Sec. 357 (3) Cr.P.C, with a default clause for simple

imprisonment for 16 days. The appeal filed against the said conviction and sentence was dismissed by the appellate court, as per judgment dated 24.3.2014 in CrI. Appeal No.212 of 2012. Aggrieved by the said conviction and sentence, this Revision Petition was filed.

3. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

4. The prosecution allegation is that the revision petitioner borrowed an amount of Rs.80,000/- from the complainant and towards the discharge of the said liability, the revision petitioner issued Ext. P3 cheque in favour of 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 make payment of the cheque amount within the statutory period or thereafter.

5. Before the trial court, PW1 and PW2 were examined and Exts.P1 to P8 were marked for the complainant. DW1 was examined and Exts.D1 and D2 were marked for the revision petitioner. The courts below, relying on the documentary as well as oral evidence adduced by the complainant, concurrently found that the accused executed Ext.P3 cheque as contemplated under Section 138 of the N.I. Act. The defence set up by the revision petitioner through the evidence of DW1 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.

6. As regards the sentence, the learned counsel for the revision petitioner pleaded for leniency. It appears that the cheque is for Rs.80,000/-. Considering the facts

and circumstances of the case including the amount covered by Ext.P3 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.80,000/- 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 imprisonment till the rising of the court and a fine of Rs.80,000/- (Rupees eighty thousand 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.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

DI

/ True copy /

PA to Judge