

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

Crl.Rev.Pet.No. 2317 of 2011 ()

CRA 258/2008 of I ADDL. SESSIONS COURT, KOLLAM
CC 318/2005 of J.M.F.C.-II(FOREST OFFENCES),PUNALUR

REVISION PETITIONER/APPELLANT/ACCUSED:

PAULOSE, AGED 62 YEARS, S/O.PAILY,
ENGINEERING CONTRACTOR, REVIEW BUILDING
KURISSADI JUNCTION, NALANCHIRA, TRIVANDRUM
PIN 695015.

BY ADV. SRI.THOMAS M.JACOB

RESPONDENTS/COMPLAINANT & STATE:

1. SASIDHARAN, AGE NOT KNOWN, S/O.PARAMU,
PARAMKIMAMVILA VEEDU, ALANCHERRY, YEROOR
KOLLAM, PIN 691312.
2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

R1 BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL
R2 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
08-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P.No.2317 of 2011

Dated this the 8th day of October 2015

ORDER

The revision petitioner is the accused in C.C. No.318 of 2005 on the files of the Court of the Judicial Magistrate of First Class-II (Forest Offences), Punalur.

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 six months and a compensation of Rs.9,25,000/- to the complainant under Sec.357 (3)

Cr.P.C. The appeal filed against the said conviction and sentence was dismissed by the appellate court. Aggrieved by the said conviction and sentence, this Revision Petition has been 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.10,00,000/- from the complainant and towards the discharge of the said liability, the revision petitioner issued Ext.P1 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 was examined and Exts.P1 to P5 were marked for the complainant. No evidence was adduced on the side of the defence.

6. The courts below, after evaluating the oral and documentary evidence adduced by the complainant, concurrently found that the revision petitioner had executed Ext.P1 cheque as contemplated under Section 138 of the N.I. Act. The revision petitioner admitted in his

examination under Section 313 Cr.P.C. that he had executed Ext.P1 cheque in favour of the complainant. 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 concurrently 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 concurrent finding of the courts below that the revision petitioner committed the offence under Section 138 of the

N.I.Act.

7. The cheque is for Rs.10,00,000/- during the pendency of the case. The revision petitioner paid an amount of Rs.75,000/- during the pendency of the case. 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 can be modified and reduced to imprisonment till the rising of the court and a fine of Rs.9,25,000/- 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.9,25,000/- (Rs. Nine lakh twenty five thousand only)
- (iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for three 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 6 months to make payment of fine ordered by this Court, as requested by the learned counsel.

Needless to state that the amount already deposited by the revision petitioner shall be treated as part payment of the fine ordered by this Court in this order. The first respondent shall be at liberty to withdraw the amount, if any, deposited by the revision petitioner before the Court in connection with this case.

sd/

**B.SUDHEENDRA KUMAR,
JUDGE**

dl/

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PA to Judge