

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 1719 of 2015 ()

Crl.A 32/2011 of SESSIONS COURT,KASARAGOD
CC 21/2008 of J.M.F.C.-II, KASARAGOD

REVISION PETITIONER/APPELLANT/ACCUSED

ABDUL AZIZ, AGED 40 YEARS
S/O.IBRAHIMKUTTY
THAVAKKAL SAW MILL
CHEMMATAMVAYAL
BELLA PO, KANHANGAD, KASARAGOD

BY ADVS.SRI.T.B.SHAJIMON
SMT.GOVINDU P.RENUKADEVI

RESPONDENT(S):

1. MUNEER, AGED 38 YEARS
S/O.MUHAMMED C
KOLIKATTA HOUSE
CHERKALA
CHENGALA PO
KASARAGOD TALUK AND DISTRICT 671 541

2. STATE OF KERALA Rep:
BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA

BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 17-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1719 of 2015

Dated this the 17th day of December 2015

O R D E R

The accused in C.C. No.21 of 2008 on the files of the Court of the Judicial Magistrate of First Class - II (Addl.Court), Kasaragod 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 (for short 'the N.I. Act).

2. Heard.

3. The prosecution allegation is that the revision petitioner issued Ext.P1 cheque in favour of the complainant towards the discharge of his liability 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 to the revision petitioner, which 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 P6 were marked for the prosecution. No evidence was adduced from the side of the revision petitioner.

5. The learned counsel for the revision petitioner has submitted that he is not arguing the revision petition on merits and that the revision petitioner needs only leniency

in the matter of sentence. Suffice it to say that having gone through the judgments of the courts below, I am satisfied that the concurrent finding by the courts below that the revision petitioner committed the offence under Section 138 of the N.I. Act, does not call for any interference by this Court.

6. As regards the sentence, the learned counsel has pleaded for leniency. The amount covered by Ext.P1 cheque is Rs.90,000/-. 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.1,00,000/- (Rupees one lakh only) to secure the ends of

justice. 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.

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

The revision petitioner is granted five months to pay the fine, as requested by the learned counsel for the revision petitioner.

Sd/-
B.SUDHEENDRA KUMAR,
JUDGE

dl/17.12..2015

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PA to Judge