

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

Crl.Rev.Pet.No. 2386 of 2011 ()

AGAINST THE JUDGMENT IN CRIMINAL APPEAL NO. 273/2010 of
ADDL.SESIONS COURT (ADHOC), MAVELIKKARA DATED 29-07-2011

AGAINST THE JUDGMENT IN CC 504/2007 of J.M.F.C., KAYAMKULAM DATED
28-04-2010

REVISION PETITIONER(S)/PETITIONER/APPELLANT/ACCUSED:

KOMALA UNNIKRISHNAN @ KOMALA
MOOLASSERIL VEEDU, CHOORAKKADU P.O., ADOOR
FOREMAN KERALA CHITTY FUND, JC/SA/2K/JMC/18216
ADMINISTRATIVE OFFICER, T.C.9/1488, SASTHAMANGALAM
THIRUVANANTHAPURAM

(The name of the petitioner is wrongly
shown as Kamala Unnikrishnan in the
judgment in Crl.A. No. 273/2010 instead
of Komala Unnikrishnan)

BY ADVS.SRI.R.RAMADAS
SRI.T.SIVADASAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

1. RAJESH KUMAR, S/O. NADASAN,
VEMBALAYIL VEEDU, KRISHNAPURAM MURI, KRISHNAPURAM VILLAGE
(OWNER OF RAJAN JEWELLERY, MADATHIL PARAMBIL COMPLEX
PANDALAM) PIN - 690533.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM. PIN - 682 031

BY ADVS. M/S. C.D.ANIL, RENJIT GEORGE, K. SHAJ, SAJJU.S.
S. VISHNU (ARIKKATTIL) & SMT. ANJU MOHAN

BY PUBLIC PROSECUTOR SRI. R. GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 16-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Dated this the 16th day of October, 2015

ORDER

The revision petitioner is the accused in C.C. No. 504 of 2007 on the files of the Court of the Judicial Magistrate of First Class, Kayamkulam.

2. The trial Court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced her thereunder to simple imprisonment for three months and to pay a compensation of Rs. 95,000/-. The appeal filed against the said conviction and sentence was dismissed confirming the conviction and sentence. 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 in order to discharge the liability due to the complainant, the revision petitioner executed 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. 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 P9 were marked for the prosecution. DW1 and DW2 were examined and Exts. D1 to D3 were marked for the defence.

6. The courts below, after appreciating the oral and documentary evidence adduced by the parties, concurrently found that the revision petitioner executed Ext. P1 cheque 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. There is no material before the court to indicate that the concurrent finding of the courts below is perverse or incorrect. In the said circumstances, the concurrent finding of the courts below that the revision petitioner committed the offence under Sec. 138 of the N.I. Act does not warrant any interference by this Court.

7. The learned counsel prayed for leniency in the matter

of sentence. Considering the facts and circumstances of the case, including the amount covered by Ext. P1 cheque, I am of the view that the sentence can be modified and reduced to imprisonment till the rising of the court and a fine of Rs. 95,000/- to secure the ends of justice.

In the result, this petition stands allowed in part,

- i) confirming the verdict of guilty and conviction passed by the courts below under Section 138 of the NI Act.
- ii) the sentence awarded by the courts below under Sec. 138 of the N.I.Act stands modified and reduced to imprisonment till the rising of the court and a fine of ₹ 95,000/- (Rupees ninety five 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

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to the complainant as compensation under
Sec. 357 (1)(b) Cr.P.C.

8. The revision petitioner is granted three months' time to pay the fine, as requested by the learned counsel for the revision petitioner.

Needless to say that if the revision petitioner had already deposited any amount before the trial court in connection with this case, the said amount shall be treated as part payment of fine ordered by this Court.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. To Judge