

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

Crl.Rev.Pet.No. 1455 of 2014 ()

AGAINST THE JUDGMENT IN CRA 143/2013 of ADDL. DISTRICT &
SESSIONS COURT, VADAKARA DATED 31-05-2014

AGAINST THE JUDGMENT IN CC 106/2012 of J.M.F.C.-II,
VADAKARA DATED 28-02-2013

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

UBAIDULLA V.P. AGED 31 YEARS
S/O.MOIDUFAISI V.P., FAISI MANZIL, VILLAIPPALLY P.O.
VADAKARA TALUK

BY ADVS.SRI.N.M.MADHU
SMT.C.S.RAJANI

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

1. MOOSA , S/O.AMMED, AGED 53 YEARS
MAKKANARI HOUSE, MAYYANNUR AMSOM DESOM,
VADAKARA TALUK
REP. BY M.MOIDU HAJI, S/O. AMMED, AGED 61 years
MAKKANARI HOUSE, P.O.MAYYANNUR, VILLYAPPALLI VIA
VADAKARA TALUK - 673 542.

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

R1 BY ADV. SRI.T.G.RAJENDRAN
R2 BY PUBLIC PROSECUTOR SRI. V.S. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 15-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Dated this the 15th day of October, 2015

ORDER

The revision petitioner is the accused in C.C. No. 106 of 2012 on the files of the Court of the Judicial Magistrate of First Class -II, Vadakara.

2. The trial Court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder till the rising of the Court and to pay fine of ₹3,29,250/-. In the appeal filed against the said conviction and sentence, the appellate court confirmed the said 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 the revision petitioner borrowed an amount of Rs. 3,00,000/- from the complainant and towards the discharge of the said liability the revision

petitioner executed Ext. P2 cheque in favour of the complainant. 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 on behalf of the complainant. It was returned as “unclaimed” as the revision petitioner refused to accept the same, even after getting intimation from the post office. However, the revision petitioner did not make payment of the cheque amount within the statutory period or thereafter.

5. Before trial Court, PW1 was examined and Exts. P1 to P4 were marked for the prosecution. The revision petitioner himself got examined as DW1 and Ext. D1 was marked for the defence.

6. After evaluating the oral and documentary evidence adduced by the parties, the courts below concurrently found that the revision petitioner executed Ext. P2 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. As regards the sentence, the learned counsel prayed for leniency in the matter of sentence. Considering the facts and circumstances of the case, including the amount covered covered by Ext. P2 cheque, I am of the view that the sentenced can be modified and reduced to a fine of Rs. 3,00,000/- 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 Rs. 3,00,000/- (Rupees three lakhs only)
- iii) in default of payment of fine the revision petitioner shall undergo simple

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imprisonment for 2 months.

- iv) in the event of realisation of the fine amount, the entire amount shall be given to the complainant as compensation under Sec. 357 (1)(b) Cr.P.C.

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

B. SUDHEENDRA KUMAR,
JUDGE.

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