

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

Crl.Rev.Pet.No. 1615 of 2014 ()

AGAINST THE JUDGMENT IN CRA 121/2013 of II ADDL. SESSIONS
JUDGE, KOZHIKODE- II DATED 13-06-2014

AGAINST THE JUDGMENT IN CC 387/2012 of SPL.J.M.F.C. FOR
TRIAL OF MARADU CASES, KOZHIKODE DATED 14-02-2013

REVISION PETITIONER(S):

PURUSHOTHAMAN,
AGED 53 YEARS, S/O. LAKSHMI AMMA,
PUNJAB NATIONAL BANK. ERNAHIPALAM, KOZHIKODE

BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN

RESPONDENT(S):

1. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM - 682 031
2. K.GOPINATHAN NAIR,
AGED 65 YEARS, S/O. DAMODARAN NAIR,
MAVILIPARAMBU, EDVAZHIPPURAM, KOTTOOLI AMSOM,
PARAYANCHERI DESOM , P.O. KUTHIRAVATTOM
KOZHIKODE TALUK - 673 016

R2 BY ADV. SRI.P.K.VARGHESE
R1 BY PUBLIC PROSECUTOR SRI. R. GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 13-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Dated this the 13th day of October, 2015

ORDER

The revision petitioner is the accused in C.C. No. 387 of 2012 on the files of the Court of the Special Judicial Magistrate of the First Class (Marad Cases), Kozhikode.

2. The trial Court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to simple imprisonment for two months and to pay compensation of Rs. 3,32,100/- to the complainant under Section 357 (3) Cr.P.C. In the appeal filed against the said conviction and sentence, the appellate court confirmed the conviction and modified the sentence to imprisonment till the rising of the court and to pay compensation of Rs. 3,50,000/- to the complainant under Sec. 357 (3) Cr.P.C. 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 executed Ext. P1 cheque for an amount of Rs. 5,50,000/- in favour of the complainant towards the discharge of the liability of the revision petitioner to the complainant in connection with an agreement for sale. 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 court below, PW1 was examined and Exts. P1 to P4 were marked. 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 defence set up by the revision petitioner was also 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 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. As regards the sentence, the learned counsel has pleaded for leniency. The cheque is for an amount of Rs. 2, 75,400/-.

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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 trial court as modified by the appellate court, can be further modified and reduced to imprisonment till the rising of the court and a fine of Rs. 2,75,400/- to meet the ends of justice. Accordingly, I order so.

8. 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 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. 2,75,400/- (Rupees two lakh seventy five thousand and four hundred only)
- iii) in default of payment of fine the revision petitioner shall undergo simple 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.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. To Judge