

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

Crl.Rev.Pet.No. 3451 of 2010 ()

AGAINST THE JUDGMENT IN CRL.A. 316/2009 of ADDITIONAL
SESSIONS COURT (ADHOC-I), PATHANAMTHITTA DATED 31-08-2010

AGAINST THE JUDGMENT IN CC 263/2009 of J.M.F.C.-II, ADOOR
DATED 7-12-2009

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

BABY, W/O.LALJI,
MUKALUVILAPADINJATTATHIL, PANNIVIZHAMURI
ADOOR VILLAGE, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENT(S)/COMPLAINANT/STATE:

1. K.C.RAJAN,
BLESSY BHAVAN, KARUVATTA MURI, PERINGANADU VILLAGE
ADOOR P.O. , ADOOR TALUK, PATHANAMTHITTA DISTRICT.
PIN - 689 690

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

R1 BY ADV. SRI.P.K.SOYUZ

R2 BY PUBLIC PROSECUTOR SRI. V.S. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 09-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
Crl.R.P. No. 3451 of 2010
.....

Dated this the 9th day of November, 2015

ORDER

The revision petitioner is the accused in C.C. No. 263 of 2009 on the files of the court of the Judicial Magistrate of First Class-II, Adoor.

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 one year and to pay compensation of Rs.5,00,000/- to the complainant under Section 357 (3) Cr.P.C. The appeal filed against the said conviction and sentence was dismissed. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard both sides.

4. The prosecution allegation is that towards the discharge of the liability of the revision petitioner 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. Statutory notice was issued on behalf of the complainant, which was received by the revision petitioner. However, the revision petitioner did not pay the cheque amount within the statutory period or thereafter.

5. Before the trial court, PW1 was examined and Exts. P1 to P6 were marked for the complainant. No evidence was adduced on the side of the revision petitioner.

6. After evaluating the oral and documentary evidence adduced by the complainant, the courts below 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 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 concurrent finding by the courts below is perverse or incorrect. In the said circumstances, the concurrent finding by 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 pleaded for leniency. Ext. P1 cheque is for an amount of Rs. 5,00,000/-. Considering the facts and circumstances, 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. 5,00,000/- (Rupees five lakhs only) to secure the ends of justice and 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 Sec. 138 of the N.I.Act.
- ii) the sentence awarded by the courts below stands modified and reduced to imprisonment

till the rising of the court and a fine of Rs. 5,00,000/- (Rupees five lakhs 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 as compensation to the complainant under Sec. 357 (1) (b) Cr.P.C.

The revision petitioner is granted six months to pay the fine.

Dated this the 9th day of November, 2015.

Sd/-B. SUDHEENDRA KUMAR, JUDGE.

ani/11-11-2015.

/truecopy/

P.S. To Judge