

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

Crl.Rev.Pet.No. 3040 of 2011 ()

Crl.A 147/2011 of ADDL.SESIONS COURT (ADHOC)-II, ERNAKULAM
CC 2595/2007 of J.M.F.C.-II, KOCHI

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

BELLA SATHYANARAYANA, S/O.CHANDRAYYA,
AGED 39 YEARS, WORKING AS NURSING ORDERLY
COCHIN PORT TRUST HOSPITAL, WILLINGTON ISLAND
RESIDING AT QTRS.NO.E/1/360/ARNS AREA, W/ISLAND
KOCHI-3.

BY ADVS.SRI.R.PREMCHAND
SMT.A.A.DILSHAH

RESPONDENT(S)/COMPLAINANT & STATE::

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1. K.T.LALAN, S/O.THEVAN,
AGED 48 YEARS, KONNOTH HOUSE, PALLICHAL RAOD
THOPPUMPADY, KOCHI-682 005.
 2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM
PIN-682 031.

R1 BY ADV. SRI.ASHIK K.MOHAMMED ALI
R2 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
14-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P.No.3040 of 2011

Dated this the 14th day of December 2015

O R D E R

The accused in C.C.No.2595 of 2007 on the files of the Court of the Judicial Magistrate of First Class - II, Kochi 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 received by the revision petitioner.

4. Before the trial court, PW1 was examined and Exts.P1 to P7 were marked for the complainant. DW1 was examined and Ext.D1 was marked for the revision petitioner.

5. The courts below correctly evaluated the oral and documentary evidence adduced by the parties and concurrently found that the revision petitioner executed Ext.P1 cheque as contemplated under Section 138 of the N.I. Act and committed the offence under Section 138 of

the N.I. Act, repelling the contentions of the revision petitioner. No circumstance has been brought before this court to indicate that the appreciation of evidence by the courts below or the concurrent finding by the courts below was perverse or incorrect. In the said circumstances, the concurrent finding by the courts below that the revision petitioner committed the offence under Section 138 of the N.I. Act, does not warrant any interference by this Court.

6. The amount covered by Ext.P1 cheque is Rs.75,000/-. 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.75,000/- (Rupees

seventy five thousand 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 two months. 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 four months to pay the fine, as requested by the learned counsel for the revision petitioner.

Sd/-

**B.SUDHEENDRA KUMAR,
JUDGE**

dl/15.12.2015

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PA to Judge