

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

Crl.Rev.Pet.No. 4015 of 2010 ()

Crl.A 151/2009 of ADDL.DISTRICT & SESSIONS COURT (ADHOC)-II, PATHANAMTHITTA
ST 120/2009 of J.M.F.C.-II, ADOOR

REVISION PETITIONER/APPELLANT/ACCUSED:

S.M. HANEEFA, THENGAZHICATHU KIZHAKATHIL
IKYA NAGAR-13, VADAKKEVILA, KOLLAM.

BY ADV. SRI.DILEEP P.PILLAI

RESPONDENTS/STATE/COMPLAINANT:

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1. STATE OF KERALA, REPRESENTED BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.
 2. S.M. SHEREEF, S.M.MANZIL, ARUKLIKILAL
PADINJAREKOTTAMUGHAL, ADOOR, REPRESENTED BY POWER
OF ATTORNEY HOLDER, THANKAPPAN NAIR, S/O. MADHAVAN
NAIR, PADINJARE NADAN VEEDU, AKKARAVILA NAGAR
HOUSE NO.14, VADKKEVILA, KOLLAM 690536

R1 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
13-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.4015 of 2010

Dated this the 13th day of November 2015

ORDER

The revision petitioner is the accused in S.T.No.120 of 2009 on the files of the Court of the Judicial Magistrate of First Class -1, Adoor.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 (“the N.I.Act” for short) and sentenced him thereunder to simple imprisonment for one year and to pay a compensation of Rs.1,00,000/- to the complainant under Sec.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.

4. The prosecution allegation is that the revision petitioner issued Ext.P2 cheque in favour of the complainant towards the discharge of the liability. The complainant presented the said cheque for encashment. However, the same was dishonoured with the endorsement 'refer to drawer' as there was no sufficient 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 trial court, PW1 was examined and Exts.P1 to P7 were marked for the complainant. DW1 and DW2 were examined and Exts.D1 and D2 were marked for

the revision petitioner.

6. The courts below, relying on the documentary as well as oral evidence adduced by the parties, 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. 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 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 by the courts below that the revision petitioner committed the offence under Section 138 of the N.I.Act.

7. The cheque is for Rs. 1,00,000/-. Considering the facts and circumstances of the case, including the amount covered by Ext.P2 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.1,00,000/- to secure the ends of justice. 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 Section 138 of the N.I. Act,
- (ii) the sentence awarded by the courts below

under Section 138 of the N.I. Act stands modified and reduced to imprisonment till the rising of the court and a fine of Rs.1,00,000/-(Rupees one lakh 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 to the complainant as compensation under Section 357(1) (b) Cr.P.C.

sd/-

**B.SUDHEENDRA KUMAR,
JUDGE**

dl/16.11.2015

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PA to Judge