

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

Crl.Rev.Pet.No. 4227 of 2008

CRA 463/2004 of ADDL.SESIONS COURT (ADHOC)-II, PALAKKAD
ST 349/2000 of C.J.M.COURT, PALAKKAD

REVISION PETITIONER/APPELLANT/ACCUSED:

N.KRISHNAKUMAR @ UNNI,
CHIEF EXECUTIVE, M/S.KIRIDOM RELEASE, COTTON HILLS
THIRUVANANTHAPURAM.

BY ADV. SRI.K.P.BALAGOPAL

RESPONDENTS/COMPLAINANT AND STATE:

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1. REMYA ADVERTISING THROUGH ITS MANAGING
PARTNER SUNDAR KUMAR, S/O.PANKAJAKSHAN NAIR
NAINAN'S BUILDING, METTUPALAYAM STREET, PALAKKAD.
 2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R1 BY ADV. SRI.K.R.VINOD
R2 BY PUBLIC PROSECUTOR, SRI JUSTIN JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
31-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P.No.4227 of 2008

Dated this the 31st day of August 2015

O R D E R

The revision petitioner is the accused in S.T. No.349 of 2000 on the files of the Court of the Chief Judicial Magistrate, Palakkad, who in this revision petition challenges the judgment of conviction and sentence passed by the trial Court under Section 138 of the Negotiable Instruments Act (for short 'the N.I. Act'). The trial court awarded simple imprisonment for three months and to pay a fine of Rs.85,000/- in default to undergo simple imprisonment for a further period of three months under

Section 138 of the N.I. Act. Against the said conviction and sentence, the revision petitioner filed appeal before the Sessions Court, Palakkad. As per judgment dated 31.10.2008 in Crl.Appeal No.463 of 2004, the Additional Sessions Court, Palakkad dismissed the appeal confirming the conviction and sentence passed by the trial court under Section 138 of the N.I. Act. Aggrieved by the said conviction and sentence, the accused before the trial court has filed this Crl. Revision Petition.

2. The prosecution allegation is that towards the discharge of the liability of the revision petitioner in connection with the contract for advertisement, the revision petitioner issued 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 accused when presented for encashment. After complying with the legal formalities, complaint was filed before the trial court under Section 138 of the N.I. Act.

3. Before the court below, the complainant himself got examined as PW1 and Exhibits P1 to P13 were marked for the complainant. No evidence was adduced on the side of the revision petitioner. The courts below relied on the evidence of PW1 and also the documentary evidence to find that the accused executed Ext.P1 cheque as contended by the complainant. Since there is concurrent finding of

guilt and conviction by the courts below, this court will not be justified in re-appreciating the evidence unless the appreciation made by the court below was perverse, incorrect or illegal. Having gone through the evidence of PW1, I am satisfied that the courts below correctly appreciated the evidence and came to the conclusion that the complainant/first respondent herein succeeded in establishing that the revision petitioner committed the offence under Section 138 of the N.I. Act. In the said circumstances, I do not find any reason to interfere with the verdict of guilty and conviction passed by the trial court under Section 138 of the N.I. Act.

4. Now the question to be decided is the quantum of

sentence to be awarded to the revision petitioner. The cheque amount in this case is only Rs.75,563/-. 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 secure the ends of justice. Accordingly, I order so.

In the result, the Crl. 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

stands modified and reduced to imprisonment till rising of the court and a fine of Rs.85,000/-,

(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 to PW1 as compensation under Section 357(i) Cr.P.C.

Needless to say that if the petitioner had already deposited any amount pursuant to the order dated 30.12.2008 passed by this Court in Crl.M.A. No.12872 of 2008, the revision petitioner need to deposit only the balance amount of fine before the

court below. The revision petitioner is granted six months time, as requested by the learned counsel for the revision petitioner, for depositing the amount, to comply with the direction in this order.

Sd/-

**B.SUDHEENDRA KUMAR,
JUDGE.**

dl

/ True copy /

PA to Judge