

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 31ST OCTOBER 2008 / 9TH KARTHIKA 1930

Crl.Rev.Pet.No. 3510 of 2008()

CRA.330/2007 of ADDL. SESSIONS COURT(ADHOC)III, PATHANAMTHITTA
CC.1682/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, PATHANAMTHITTA
.....

REVN. PETITIONER(S):

P.B.ANILKUMAR,
PULAYIL HOUSE, EDAPPON, IRANIKUDY P.O.,
PANDALAM.

BY ADV. SRI.S.HARIKRISHNAN
SRI.C.UNNIKRISHNAN (KOLLAM)

RESPONDENT(S):

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1. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
ERNAKULAM.
 2. P.G.RAJENDRAN NAIR,
PARAYANTETHU HOUSE,KANJIRAVELI,ARAMULA.

PUBLIC PROSECUTOR SRI C M NAZAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 31/10/2008, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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CRL.R.P.NO. 3510 OF 2008
.....

DATED THIS THE 31st DAY OF OCTOBER, 2008

ORDER

Petitioner is the accused and second respondent, the complainant in C.C.1682 of 2006 on the file of Judicial First Class Magistrate-I, Pathanamthitta. Case of second respondent is that towards payment of Rs.1,85,000/-, due to him, petitioner issued Ext.P1 cheque dated 20.12.2005 drawn in his account maintained in Kochalummoodu branch of State Bank of Travancore and when the cheque was presented for encashment, it was dishonoured for want of sufficient funds. Ext.P4 notice was sent demanding the amount covered by the cheque, which was received by petitioner under Ext.P6. He did not pay the amount and thereby committed offence under Section 138 of N.I.Act.

2. Petitioner pleaded not guilty. Second respondent was examined as PW1 and Exts.P1 to P6 were marked. Petitioner did not adduce any evidence. Learned Magistrate, on the evidence, found the petitioner guilty. He was sentenced to simple imprisonment for six months, in addition to a fine of Rs.1,85,000/- and in default, simple imprisonment for three months under Section 357(1) of Code of Criminal Procedure. On realisation of fine, it was directed to be paid to first respondent as compensation. Petitioner challenged the

conviction and sentence before Sessions Court, Pathanamthitta in Crl.A.330 of 2007. Learned Sessions Judge, on reappreciation of evidence, confirmed the conviction and sentence and dismissed the appeal. It is challenged in this revision petition filed under Section 397 read with 401 of Code of Criminal Procedure.

3. Learned counsel appearing for petitioner was heard. Learned counsel submitted that in view of the concurrent finding, he is not challenging the conviction. Learned counsel submitted that petitioner is an employee of KSEB and in such circumstances, the substantive sentence may be modified. So long as sentence is not to be modified or varied as against the interest of second respondent/complainant, it is not necessary to issue notice to him.

4. Evidence of PW1 establish that Ext.P1 cheque was issued towards the repayment of Rs.1,85,000/- due from the petitioner and it was dishonoured for want of sufficient funds. Evidence also establish that first respondent has complied with all the statutory formalities provided under Section 138 and 142 of N.I.Act. Conviction of petitioner is perfectly legal and proper.

5. Considering the nature of the offence, interest of justice will be met, if the sentence is modified with adequate compensation to second respondent.

6. Revision petition is allowed in part. Conviction of the

petitioner for the offence under Section 138 of N.I.Act is confirmed. Sentence is modified to imprisonment till rising of court and a fine of Rs. 2,00,000/- and in default, simple imprisonment for two months. On realisation of fine, Rs.1,85,000/- to be paid to second respondent as compensation under Section 357(1) of Code of Criminal Procedure. Petitioner is granted three months time from today to pay the fine. Petitioner is directed to appear before the Magistrate on the expiry of three months from today.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-