

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE S.SIRI JAGAN

THURSDAY, THE 22ND DAY OF NOVEMBER 2012/1ST AGRAHAYANA 1934

Cr1.Rev.Pet.No. 629 of 2004 (C)

CRA.281/2002 of the IIIRD ADDITIONAL SESSIONS COURT, ERNAKULAM
CC.503/1998 of JUDICIAL FIRST CLASS MAGISTRATE COURT-II, MUVATTUPZHA

REVISION PETITIONER/APPELLANT/ACCUSED:

ROY PAUL, AGED 45 YEARS, S/O.PAULOSE,
THARAMATTATHIL HOUSE, PIRAVAM.

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENTS/RESPONDENTS/STATE AND COMPLAINANT:

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.
2. SUNU VARGHESE, S/O.VARGHESE,
KALLIYATTIL, EZHAKKARANADU.P.O., PUTHENCRUZ.

BY ADV.SRI.BIJU MEENATTOOR, PUBLIC PROSECUTOR
R2 BY ADV. SRI.C.N.PRABHAKARAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
22-11-2012, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

AS

S. SIRI JAGAN, J

Crl.R.P.NO.629 OF 2004

Dated this the 22nd day of November, 2012.

ORDER

The petitioner is the accused in CC No. 503/2008 before the Judicial First Class Magistrate-11, Muvattupuzha. He was prosecuted for the offence punishable u/s 138 of the Negotiable Instruments Act. The case of the complainant was that the petitioner borrowed an amount of Rs.21,350/-, in repayment of which he issued a cheque dated 30.11.1997 which, on presentation through the complainant's bank, was returned unpaid with the endorsement 'insufficient funds'. Despite a statutory notice issued to the petitioner by the complainant, the petitioner neither replied to the same nor did he pay the amount. The petitioner set up a defence that the petitioner along with one Thomas Valiaveetil was running a Hotel by name 'Tourist Hotel' at Pattimattom during 1997. The complainant was the Manager of the Hotel. The petitioner entrusted a signed blank cheque and a blank stamp paper to the complainant for handing over to the owner of the Hotel, one Muthu. Later the complainant was dismissed from service for falsification of

accounts. The complainant demanded a compensation of Rs.25,000/- which was not paid. The complainant filed O.S. No.213/1998 before the Munsiff's Court, Muvattupuzha demanding payment of a sum of Rs.30,000/- by misusing the stamped blank paper, which was dismissed. Thereafter, the complainant created Ext.P1 with the blank signed cheque. The Learned Magistrate did not accept the defence set up by the petitioner who convicted the petitioner and sentenced him to undergo simple imprisonment for 3 months and to pay a compensation of Rs.30,000/- to the complainant. Criminal Appeal No. 281/2002 filed before the 3rd Additional Sessions Judge, Ernakulam, ended in confirmation of the conviction and sentence. The petitioner is challenging the judgments of the courts below.

2. When the matter was taken up for hearing today, none appears for the petitioner and the 1st respondent. Therefore I am constrained to consider the matter on the basis of records and judgments of the courts below and the arguments of the learned Public Prosecutor.

3. The matter is simply one of the appreciation of evidence. In such cases, I can interfere under Section 397 of

Code of Criminal Procedure, only if the appreciation of evidence is perverse. After receipt of the statutory notice, the petitioner did not even choose to send reply. The petitioner did not produce any valid evidence to probabalize the defence set by him. On a reading of the evidence available I am satisfied that the lower courts have appreciated the evidence in the correct perspective.

4. In the above circumstances, I do not find any infirmity in the lower courts not accepting the defence set up by the petitioner. In any event, I do not find any perversity whatsoever in the appreciation of evidence by the courts below.

Hence, the Criminal Revision Petition is dismissed.

Sd/-
S.SIRI JAGAN,
JUDGE

/TRUE COPY/

P.A. TO JUDGE

SKV