

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

Crl.Rev.Pet.No. 535 of 2005 ()

AGAINST THE JUDGMENT IN CRL.APPEAL 97/2003 of ADDL. SESSIONS JUDGE,
NORTH PARAVUR DATED 10.08.2004

AGAINST THE JUDGMENT IN CC 191/2000 of JUDICIAL FIRST CLASS
MAGISTRATE COURT-I, ALUVA DATED 23-01-2003

REVISION PETITIONER/APPELLANT/ACCUSED:

R.THIRAVIYAN PILLAI,
S/O. RAJARATHINAM PILLAI, PROPRIETOR
M/S.GANESH TRADERS, T.C.NO.41/1065, KURIATHY
MANACAUD P.O., THIRUVANANTHAPURAM-9
NOW RESIDING AT T.C.22/385-4, KONCHARAVILA
MANACAUD P.O., THIRUVANANTHAPURAM

BY ADVS.SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SMT.SONIYA.M
SRI.N.A.SHAFEEK

RESPONDENTS/RESPONDENT/COMPLAINANT AND STATE:

1. M/S. NEST CONDIMENTS LTD.,
REPRESENTED BY ITS MANAGER MR.SHAJI KOSHY,
S/O. KOSHY JACOB, XXXV/952, PUTHANPURACKAL ROAD
PALARIVATTOM, KOCHI-25.
2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 03-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No. 535 of 2005

Dated this the 3rd day of September, 2015

ORDER

The revision petitioner is the accused in CC No.191/2000 on the files of the Court of the Judicial Magistrate of First Class-I, Aluva.

2. The revision petitioner was convicted by the trial court under Section 138 of the Negotiable Instruments Act and sentenced to simple imprisonment for 10 days and a compensation of Rs.14,090/- to the complainant under Section 357(3) Cr.PC. The appeal filed challenging the above conviction and sentence was dismissed by the appellate court as per the judgment in Crl. Appeal 97/2003. Aggrieved by the said conviction and sentence, the revision petitioner filed this criminal revision petition.

3. Heard. The prosecution allegation is that the revision petitioner purchased spices from the complainant for an amount of Rs.14,090/- and towards the discharge of

the said liability, the revision petitioner issued Ext.P2 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 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.

4. Before the trial court, PW1 was examined and Exts.P1 to P7 were marked for the prosecution. DW1 was examined and Exts.D1 to D3 were marked for the defence. The courts below concurrently found that the revision petitioner executed Ext.P2 cheque in favour of the complainant. The revision petitioner has a consistent case that the revision petitioner entrusted a blank signed cheque with the complainant at the time of borrowing the spices and the said cheque had been misutilised by the complainant to file the present complaint. It is admitted by

PW1 that there were so many transactions between the revision petitioner and the complainant. Even though the revision petitioner had a contention that he had paid the entire amount covered by Ext.P2 cheque to the complainant, the revision petitioner did not incline to produce the details of the account of the revision petitioner, maintained by PW1, before the court to substantiate the contention of the complainant. Ext.D1 would show that an amount of Rs.12,000/- had been received by the complainant from the revision petitioner towards the discharge of the liability covered by Ext.P2 cheque. The first endorsement in Ext.D1 pertains to cheque No.027001, which is Ext.P2 cheque involved in this case. PW1 was ignorant about the total amount paid by the revision petitioner to the complainant. It was also admitted by PW1 that there was another case against the revision petitioner as C.C 190/2000. PW1 admitted that the said case was also filed by the complainant herein. Considering the facts and circumstances of the case, including the fact that there

were admittedly many transactions between the complainant and the revision petitioner, the non-production of the documents relating to the transaction involved in this case is fatal to the complainant. Having gone through the evidence of PW1, I am not satisfied that the evidence of PW1 alone is sufficient to hold that the revision petitioner executed Ext.P2 cheque as contemplated under Section 138 of the N.I Act. Since there is no other material before the court to hold that the revision petitioner executed Ext.P2 cheque, the finding by the courts below that the revision petitioner executed Ext.P2 cheque as contemplated under Section 138 of the N.I Act, cannot be sustained. Consequently, the verdict of guilty ,conviction and sentence passed by the courts below cannot be sustained.

5. In the result, this revision petition stands allowed, setting aside the conviction and sentence passed by the courts below under Section 138 of the N.I Act and the revision petitioner is acquitted for the offence under Section 138 of the N.I Act. The bail bond of the revision petitioner

stands cancelled and he is set at liberty.

Needless to say that the revision petitioner shall be at liberty to get the refund of the amount, if any, deposited by the revision petitioner before the trial court in connection with this case, if an application in this regard is filed by the revision petitioner before the trial court.

Sd/-
B.SUDHEENDRA KUMAR
JUDGE

sm/