

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

Cr1.Rev.Pet.No. 1131 of 2009 ()

JUDGMENT IN Cr1.A 187/2002 OF II ADDITIONAL SESSIONS COURT, KOLLAM

JUDGMENT IN CC 907/1998 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT-I, KOLLAM

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

DEVAKUMAR, S/O. SANKARAN NAIR,
SUBHADRA NIKETHAN, THAZHAVA VILLAGE, KARUNAGAPPALLY
KOLLAM.

BY ADVS.SRI.B.RAMAN PILLAI
SRI.R.ANIL
SRI.ANIL K.MOHAMMED
SRI.SUJESH MENON V.B.
SRI.JOSEPH P.ALEX
SRI.SHYAM ARAVIND
SRI.T.ANIL KUMAR

RESPONDENT(S)/COMPLAINANT/STATE:

STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R, BY PUBLIC PROSECUTOR V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 12-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.1131 of 2009

Dated this the 12th day of November, 2015

ORDER

The revision petitioner is the accused in C.C.No.907 of 1998 on the files of the Court of the Judicial Magistrate of First Class-I, Kollam.

2. The trial court convicted the revision petitioner under Section 420 IPC and sentenced him thereunder to rigorous imprisonment for two years and to pay a compensation of ₹60,000/- to PW1 under Section 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 the learned counsel for the petitioner.

4. The prosecution case is that the revision petitioner borrowed an amount of ₹54,000/- from PW1 and to discharge the said liability, the revision petitioner issued Exts. P1 and P2 cheques in favour of PW1. PW1 presented the said cheques for

encashment. However, the said cheques were dishonoured due to the insufficiency of funds in the account of the revision petitioner. It was further stated in the memo that "signature differs". On the said allegation, PW1 filed a complaint before the court, which was forwarded by the court to the police under Section 156 (3) Cr.P.C. for investigation and the report. Accordingly, the crime was registered. After investigation, the police filed the final report before the court.

5. Before the trial court, PW1 to PW12 were examined and Exts.P1 to P9 were marked for the prosecution. No evidence was adduced on the side of the revision petitioner.

6. The courts below, after evaluating the oral and documentary evidence adduced by the prosecution, concurrently found that the revision petitioner committed the offence under Section 420 IPC. The defence set up by the revision petitioner was also 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 concurrent finding by the courts below is perverse or incorrect. In the said circumstances, the concurrent finding by the courts below that the revision petitioner committed the offence under Section 420 IPC does not warrant any interference by this court.

7. As regards the sentence, the learned counsel for the revision petitioner has pleaded for leniency. Considering the facts and circumstances of the case, including the nature of the transactions and the amount covered by Exts. P1 and P2 cheques, 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 ₹75,000/- 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 420 IPC.

(ii) the sentence awarded by the courts

below under Section 420 IPC stands modified and reduced to imprisonment till the rising of the court and a fine of ₹75,000/- (Rupees seventy five thousand only).

(iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for six months.

(iv) in the event of realisation of fine, the entire amount shall be given to PW1 as compensation under Section 357 (1) (b) Cr.P.C.

The revision petitioner is granted four months to pay the fine as requested by the learned counsel for the revision petitioner.

Sd/-

**B. SUDHEENDRA KUMAR
JUDGE**

ScI/12.11.2015

True Copy

PA to Judge