

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

Crl.Rev.Pet.No. 1312 of 2009 (D)

CRA 789/2007 of ADDL.SESIONS COURT (ADHOC)-II, KOZHIKODE
ST 988/2006 of SPL.J.M.F.C. (MARADU CASES), KOZHIKODE

REVISION PETITIONER/APPELLANT/ACCUSED:

K.R.RADHAKRISHNAN, S/O.RAMAN,
AGED 58 YEARS, PULPARAMBIL HOUSE, CHEVARAMBALAM POST
KOZHIKODE-17.

BY ADV. SRI.K.P.SUDHEER

RESPONDENTS/STATE AND COMPLAINANT:

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1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.
 2. K.C.RAJKUMAR,
S/O.GOVINDAN NAIR, 'RAJ BHAVAN', KOLATHARA POST
CHERUVANNUR, KOZHIKODE DISTRICT.

R2 BY ADV. SRI.V.R.KESAVA KAIMAL
R2 BY ADV. SRI.N.M.MADHU
R1 BY SRI.JUSTIN JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
01-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1312 of 2009

Dated this the 1st day of September 2015

ORDER

The revision petitioner is the accused in S.T. No.988 of 2006 on the files of the court of Special Judicial First Class Magistrate (Marad cases), Kozhikode. The revision petitioner was convicted by the trial court under Section 138 of the Negotiable Instruments Act (for short 'the N.I. Act') and sentenced to imprisonment till rising of the court and to pay a compensation of Rs.1,00,000/- to the complainant under Section 357(3) Cr.P.C. with a default clause for simple imprisonment for two months. The

appeal filed against the said conviction and sentence was dismissed by the Additional Sessions Court, Kozhikode as per judgment dated 4.12.2008 in CrI.Appeal No.789 of 2007. Aggrieved by the said conviction and sentence, the accused in S.T. No.988 of 2006 filed the present revision petition.

2. Heard.

3. The prosecution case is that the revision petitioner borrowed an amount of Rs.1,00,000/- from the complainant and towards the discharge of the said liability, the revision petitioner issued Ext.P1 cheque in favour of the complainant. The said cheque was dishonoured when presented for encashment due to insufficiency of funds in the account of the revision petitioner. Statutory notice was

issued on behalf of the complainant, which was received by the revision petitioner. However, the revision petitioner did not make the payment of the cheque amount within the statutory period or thereafter.

4. The complainant himself got examined as PW1 and Ext.P1 to P3 series were marked for the complainant. No evidence was adduced on behalf of the revision petitioner. After evaluating the evidence, the courts below concurrently found the revision petitioner guilty under Section 138 of N.I. Act. Both the courts below relied on documentary as well as oral evidence adduced by the complainant and came to the conclusion that the revision petitioner executed Ext.P1 cheque as contemplated under Section 138 of N.I. Act. Having gone through the

judgments of the courts below in the light of the evidence of PW1, I am satisfied that the courts below correctly appreciated the evidence and correctly entered into a finding that the revision petitioner committed offence under Section 138 of N.I. Act. Since there is concurrent finding by the courts below on the facts, this court will not be justified in interfering with the same unless the finding of the courts below is perverse, incorrect or illegal. In this case, I am satisfied that the courts below had correctly appreciated the evidence and in the said circumstances, there is no scope for interfering with the said finding of guilty.

5. The cheque amount is Rs.1,00,000/-. Considering the facts and circumstances of the case, I am of the view

that the courts below had taken a lenient view in the matter of sentence. In the said circumstances, the sentence awarded by the courts below does not call for any interference by this court.

In the result, this revision petition stands dismissed. However, the revision petitioner is granted six months time to comply with the direction of deposit in this order.

Sd/

**B.SUDHEENDRA KUMAR,
JUDGE**

dl

/ True Copy /

PA to Judge