

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1454 of 2009 ()

AGAINST THE JUDGMENT IN CRL.A. 1081/2007 of SESSIONS
COURT,KOZHIKODE DATED 08-04-2009

AGAINST THE JUDGMENT IN ST 43/2007 of J.M.F.C.-
II,THAMARASSERY DATED 04-12-2007

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

C.T.MUNEER, S/O.MOOSA, CHOUTHODIKA
HOUSE, KODIYATHUR AMSOM, CHERUVADI DESOM.

BY ADV. SRI.K.P.SUDHEER

RESPONDENT(S)/STATE & COMPLAINANT:

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

2. AHAMMEDKUTTY, S/O. KUNHAPPA HAJI,
PULIKKAL PARAMMAL HOUSE, KODIYATHUR AMSOM
CHERUVADI DESOM.

R2 BY ADVS. SRI.VINOD SINGH CHERIYAN, BY ADV.
SRI.R.SUDHISH & BY ADV. SMT.M.MANJU
BY PUBLIC PROSECUTOR SRI.R. GITESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 06-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
Crl.R.P. No. 1454 of 2009
.....

Dated this the 6th day of November, 2015

ORDER

The revision petitioner is the accused in ST No. 43 of 2007 on the files of the court of the Judicial Magistrate of First Class-II, Thamarassery.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to imprisonment till the rising of the court and to pay compensation of Rs. 95,000/- to the complainant under Section 357 (3) Cr.P.C. In the appeal, the conviction was confirmed and the sentence was modified to a fine of Rs. 95,000/- with a default clause for simple imprisonment for three months. Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

3. Heard both sides.

4. The prosecution allegation is that the revision petitioner executed Ext. P1 cheque in favour of the complainant towards the discharge of the liability to the complainant from the revision petitioner. 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 on behalf of the complainant, which was received by the revision petitioner. The revision petitioner did not pay the cheque amount within the statutory period or thereafter.

5. Before the trial court, PW1 and PW2 were examined and Exts. P1 to P6 were marked for the complainant. No evidence was adduced on the side of the revision petitioner.

6. PW1 is the complainant who had given evidence in support of the contentions in the complaint. PW1 stated that the

accused wrote everything in Ext. P1 cheque in his presence and thereafter the accused put his signature on Ext. P1. PW2 also supported the evidence of PW1 in all material aspects.

7. The courts below, after evaluating the oral and documentary evidence adduced by the complainant, concurrently found that the revision petitioner executed Ext. P1 cheque as contemplated under Section 138 of the N.I. Act. The defence set up by the revision petitioner was 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 Sec. 138 of the N.I. Act does not warrant any interference by this Court. The appellate

court had taken a very lenient view in the matter of sentence. Therefore, the sentence awarded by the appellate court also does not call for any interference by this Court.

8. In the result, this Revision Petition stands dismissed. However, the revision petitioner is granted six months to pay the fine.

The amount, if any, deposited by the revision petitioner will be treated as part payment of the fine ordered by the appellate court. If any amount is deposited by the revision petitioner, the second respondent shall be at liberty to withdraw the same.

Dated this the 6th day of November, 2015.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

Ani/6-11-15

/truecopy/

P.S. To Judge