

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1097 of 2012

CRL.A 697/2008 of ADDL.SESIONS (FAST TRACK COURT -III),
THIRUVANANTHAPURAM
IN ST 313/2006 of J.M.F.C.-VII, THIRUVANANTHAPURAM

REVISION PETITIONER/APPELLANT/ACCUSED:

DHARMARAJ C.,
CP.11/76, CHRIST ILLAM, KEEZHIKOLLA VATTAVILA
NEYYATTINKARA, THIRUVANANTHAPURAM.

BY ADV. SRI.G.SUDHEER

RESPONDENTS/STATE & COMPLAINANT:

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1. M/S.S.K.TRADERS(P)LTD
HAVING ITS REGISTERED OFFICE AT TC.40/366
IIND PUTHEN STREET, MANACAUD P.O., THIRUVANANTHAPURAM
REPRESENTED BY ITS SALES EXECUTIVE BIJU.V.
PIN-695001.
 2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.K.L.NARASIMHAN
R1 BY ADV. SRI.N.KRISHNA PRASAD
R2 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
26-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1097 of 2012

Dated this the 26th day of October 2015

ORDER

The revision petitioner is the accused in S.T. No.313 of 2006 on the files of the Court of the Judicial Magistrate of First Class-VII, Thiruvananthapuram.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I.Act') and sentenced him thereunder to simple imprisonment for six months and a fine of Rs.43,000/-. In the appeal filed against the said conviction and sentence, the conviction

was confirmed and the sentence was modified and reduced to imprisonment till the rising of the court and to pay a compensation of Rs.43,000/- under Section 357(3) Cr.P.C. Aggrieved by the said conviction and sentence, the revision petitioner has filed this revision petition.

3. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

4. The prosecution allegation is that the revision petitioner issued Ext.P2 cheque in favour of the complainant towards the discharge of the liability to the complainant. The complainant presented the said cheque for encashment. However, the same was dishonoured as there was no sufficient fund in the account of the revision petitioner to honour the cheque. Statutory notice was

issued to the revision petitioner, which was returned as “unclaimed” as the revision petitioner refused to accept the same even after getting the intimation from the postal authorities.

5. Before the trial court, PW1 and PW2 were examined and Exts.P1 to P11 were marked for the complainant. DW1 was examined and Ext.D1 and D2 were marked for the revision petitioner.

6. The courts below, after evaluating the oral and documentary evidence adduced by the parties, concurrently found that the revision petitioner had executed Ext.P2 cheque as contemplated under Section 138 of the N.I. Act. Since there is concurrent finding on facts, this Court will not be justified in interfering with the

same unless the finding of the courts below is perverse or incorrect. No circumstance has been brought to my notice to indicate that the appreciation of evidence by the courts below was perverse or incorrect. In the said circumstances, the concurrent finding of the courts below that the revision petitioner committed the offence under Section 138 of the N.I. Act does not warrant any interference by this court.

7. The appellate court had taken a very lenient view in the matter of sentence. In the said circumstances, the sentence awarded by the appellate court also does not call for any interference by this court.

In the result, this revision petition stands dismissed.

The revision petitioner is granted six months to pay the compensation ordered by the appellate court. I make it

CrI.R.P.1097/2012

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clear that the amount, if any, deposited by the revision petitioner before the trial Court in connection with this case, will be treated as part payment of the compensation ordered by this Court.

sd/-

**B.SUDHEENDRA KUMAR,
JUDGE**

dl

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PA to Judge