

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 1748 of 2009 ()

Crl.A 675/2007 of ADDL.DISTRICT COURT,KOTTAYAM
CC 515/2005 of J.M.F.C.,VAIKOM

REVISION PETITIONER(S)/PETITIONER/APPELLANT/ACCUSED:

T.AJAYAKUMAR,S/O.P.R.THANKAPPAN,JAYASREE
SADANAM, KIZHAKKUMCHERRY VADAKKEMURI
VAIKOM.(THE NAME AND ADDRESS OF REVISION PETITIONER IS
CORRECTED AS "AJITHKUMAR
S/O.THANKAPPAN, VAIKOM BAKERY, PRIVATE BUS STAND ROAD
NEAR VAIKOM GOVT. HOSPITAL
VAIKOM" AS PER ORDER DATED 01.12.2015 IN CRRP.1748/2009)

* THE NAME OF REVISION PETITIONER CORRECTED AS:

"AJITH KUMAR, S/O.THANKAPPAN
VAIKOM BAKERY
PRIVATE BUS STAND ROAD
NEAR VAIKOM GOVT. HOSPITAL
VAIKOM."

AS PER ORDER DT.1.10.2015 IN CRL.R.P.1748/2009.

BY ADVS.SRI.SHAJI THOMAS PORKKATTIL
SRI.N.NAGARESH
SRI.BINU PAUL
SRI.T.V.VINU

RESPONDENTS/COMPLAINANT & STATE:

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1. M.R.REJI,S/O.RAVINDRAN,CHULLITHARA
HOUSE, N.E.WARD, VAIKOM MUNICIPALITY
NADUVILE, VILLAGE, VAIKOM TALUK.
 2. STATE OF KERALA,REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.SIVARAM
R1 BY ADV. SRI.SHANKAR V.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
30-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1748 of 2009

Dated this the 30th day of November 2015

O R D E R

The accused in C.C.No.515 of 2015 on the files of the Court of the Judicial Magistrate of First Class, Vaikom has filed this revision petition challenging the concurrent finding of conviction and sentence passed by the courts below under Section 138 of the Negotiable Instruments Act (for short 'the N.I. Act').

2. Heard.

3. The prosecution allegation is that the revision petitioner borrowed Rs.60,000/- from the complainant and towards the discharge of the said liability, the revision

petitioner executed Ext.P1 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 returned as 'unclaimed' as the revision petitioner did not accept the same, even after the receipt of intimation from the postal authorities.

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

5. The learned counsel for the revision petitioner has argued that no notice was served on the revision petitioner before filing the complaint and in the said circumstances,

the revision petitioner is entitled to the benefit of doubt. According to the revision petitioner, he is Ajayakumar and not Ajithkumar. His father's name is not disputed. The notice was issued to Ajithkumar, S/o.Thankappan. The complaint was also filed against Ajithkumar, s/o.Thankappan. The trial court passed the judgment of conviction and sentence against the person named as accused in the complaint namely, Ajithkumar, S/o.Thankappan. The revision petitioner filed a statement after his examination under 313 of the Code, wherein the revision petitioner signed the statement as 'Ajithkumar'. However, when he filed the appeal before the Sessions Court, instead of 'Ajithkumar', he mentioned 'Ajaykumar' as the appellant. It is not discernible as to how the Sessions

Court accepted the appeal before verifying the name of the appellant. For the said reason, the argument in this regard fails.

6. Ext.P6 would show that the statutory notice issued to the revision petitioner was returned as 'unclaimed'. Further, it appears from Ext.P6 that the postal authority had given intimation to the revision petitioner regarding Ext.P6 notice. Even then, the revision petitioner did not incline to accept the same. In the said circumstances, the argument of the learned counsel for the revision petitioner in this regard, cannot be accepted.

7. The courts below correctly evaluated the oral and documentary evidence adduced by the complainant and concurrently found that the revision petitioner had

executed Ext.P1 cheque as contemplated under Section 138 of the N.I. Act and committed the offence under Section 138 of the N.I. Act, repelling the contentions of the revision petitioner. Since there is concurrent finding on facts, this Court will not be justified in interfering with the same unless the finding by 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 by 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.

8. 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 two months to pay the fine, as requested by the learned counsel for the revision petitioner.

Sd/-
B.SUDHEENDRA KUMAR,
JUDGE

dl/30.11.2015

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PA to Judge