

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

Cr1.Rev.Pet.No. 2416 of 2009 ()

JUDGMENT IN Cr1.A 1261/2004 OF II ADDITIONAL SESSIONS COURT,
ERNAKULAM
JUDGMENT IN CC 215/2001 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
NORTH PARAVUR

REVISION PETITIONER/APPELLANT/ACCUSED:

N.A.ABOOBACKER, NAMBOORIMADOM, AZHIKODE
JETTY, KODUNGALLOOR.

BY ADV. SRI.VARGHESE PREM

RESPONDENT/COMPLAINANT & STATE:

1. K.M.JOSE, KACHAPILLY HOUSE, KADAMKULAM,
METHALA.
2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, ERNAKULAM.

R,R1 BY ADV. SRI.RAJIV NAMBISAN
R, 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:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.2416 of 2009

Dated this the 6th day of November, 2015

ORDER

The revision petitioner is the accused in C.C.No.215 of 2011 on the files of the Court of the Judicial Magistrate of First Class-II, Paravur.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him thereunder to simple imprisonment for five months and to pay a compensation of ₹50,000/- to the complainant under Section 357(3) Cr.P.C. In the appeal, 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 ₹50,000/- to the complainant under Section 357(3) Cr.P.C. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard.

4. The prosecution allegation is that the revision

petitioner borrowed an amount of ₹55,000/- from the complainant and towards the discharge of the liability, the revision petitioner issued Ext.P1 cheque in favour of the complainant. The complainant presented the said cheque for encashment. However, the same was dishonoured due to the insufficiency of funds in the account of the revision petitioner. Statutory notice was issued on behalf of the complainant to the revision petitioner, which was received by the revision petitioner. However, the revision petitioner did not pay the cheque amount within the statutory period or thereafter.

5. Before the trial court, PW1 was examined and Exts.P1 to P7 were marked for the complainant. DW1 and DW2 were examined and Exts.D1 to D6 (a) were marked for the revision petitioner. Ext.C1 was also marked.

6. The courts below, after evaluating the oral and documentary evidence adduced by the parties, 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 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 138 of 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. Therefore, the sentence awarded by the appellate court also does not warrant any interference by this Court.

In the result, this revision petition stands dismissed. However, the revision petitioner is granted six months to pay the compensation ordered by the appellate court.

Sd/-

B. SUDHEENDRA KUMAR
JUDGE

Scl/7.11.2015

True Copy

PA to Judge