

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

Crl.Rev.Pet.No. 2635 of 2009 ()

Crl.A 568/2004 of II ADDL.S.C.,THIRUVANANTHAPURAM
CC 424/2000 of J.M.F.C.-I,NEYATTINKARA

REVISION PETITIONER/APPELLANT/ACCUSED:

M.G.S. MITHRAN, S/O. MADHAVAN NAIR,
KISHKINDA, NEAR R.C.CHURCH, NEYYATTINKARA.

BY ADV. SRI.V.R.GOPU

RESPONDENTS/COMPLAINANT:

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1. K.MARTIN, PEACE COTTAGE, NEAR R.C. CHURCH
NEYATTINKARA.
 2. STATE OF KERALA REP. BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
29-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.2635 of 2009

Dated this the 29th day of October 2015

O R D E R

The revision petitioner is the accused in C.C. No.424 of 2000 on the files of the Court of the Judicial Magistrate of First Class-1, Neyyattinkara.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 (“the N.I.Act” for short) and sentenced him thereunder to simple imprisonment for three months and to pay Rs.1,05,000/- to the complainant as compensation 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 a fine of Rs.1,05,000/-. Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

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 his liability to 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 refused to accept the same even after receiving the intimation from the postal authorities.

However, the revision petitioner did not make payment of the cheque amount within the statutory period or thereafter.

5. Before the trial court, PW1 was examined and Exts.P1 to P10 were marked for the complainant. No evidence was adduced on the side of the defence.

6. PW1 is the Power of Attorney holder of the complainant. PW1 had given evidence in tune with the contentions in the complaint.

7. The learned counsel for the revision petitioner has submitted that since there is no assertion by PW1 in the complaint that he had knowledge with regard to the transaction, his evidence cannot be accepted to bring home the guilt of the revision petitioner. The learned counsel for the revision petitioner relied on the decision of the Apex

Court in **Narayanan and another v. State of Maharashtra and others** [AIR 2014 S.C. 630] to buttress his argument. The Apex Court in **Narayanan** (supra) held that the power of attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge with regard to the transaction. It was further held in **Narayanan** (supra) that it is required to make specific assertion as to the knowledge of the power of attorney holder in the said transaction explicitly in the complaint, and the power of attorney holder, who has no knowledge regarding the transactions, cannot be examined as a witness.

8. In this case, the complainant did not make any assertion in the complaint as to the knowledge of PW1 in the transactions involved in this case. Therefore, the

evidence of PW1 is not sufficient to hold that the revision petitioner executed Ext.P1 cheque as contemplated under Section 138 of N.I. Act. In the said circumstances, the conviction and sentence passed by the courts below under Section 138 of N.I. Act, cannot be sustained.

In the result, this revision petition stands allowed setting aside the conviction and sentence passed by the courts below under Section 138 of the N.I. Act and the revision petitioner is acquitted for the said offence. The bail bond of the revision petitioner stands cancelled and he is set at liberty.

Sd/-
B.SUDHEENDRA KUMAR,
JUDGE

dl/31.10.2015

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PA to Judge