

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

Cr1.Rev.Pet.No. 2763 of 2009 ()

JUDGMENT IN CRA 235/2009 OF ADDITIONAL SESSIONS COURT (ADHOC)-II,
ERNAKULAM DATED 10-07-2009

JUDGMENT IN ST 3064/2005 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT, KOLENCHERRY DATED 20-02-2009

REVISION PETITIONER/APPELLANT IN CRA 235/2009/ACCUSED

IN ST 3064/2005 :

T.P.SASIDHARAN, S/O.PARAMESWARA PILLAI,
AGED 58, PUTHUPARAMBIL HOUSE, KANJIRAMATTOM PO
ERNAKULAM DISTRICT.

BY ADVS.SRI.A.BALAGOPALAN
SRI.RAJAGOPALAN A.

RESPONDENT(S)/1ST RESPONDENT IN CRIMINAL APPEAL/

COMPLAINANT IN ST 3064/2005/STATE :

1. THE FEDERAL BANK LIMITED,
PUTHENCROUZ BRANCH, REPRESENTED BY ITS BRANCH MANAGER
CHACKO PATHROSE, SON OF PATHROSE.
2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R, BY PUBLIC PROSECUTOR SRI. V.S.SREEJITH
R,R1 BY ADV. SRI.A.ANTONY
R,R1 BY ADV. SMT.LEELAMMA ANTONY

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 07-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.2763 of 2009

Dated this the 7th day of October, 2015.

ORDER

The revision petitioner is the accused in S.T.No. 3064 of 2005 on the files of the Court of the Judicial Magistrate of First Class, Kolencherry.

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 filed against the said conviction and sentence, the appellate court confirmed the conviction and modified the sentence to imprisonment till the rising of the court and a fine of ₹50,000/- 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 availed a loan from the complainant and towards the discharge of the liability under the said loan, the revision petitioner issued Ext.P2 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, which was returned as unclaimed as the revision petitioner refused to accept the same even after the receipt of intimation from the postal authorities.

5. Before the court below, PW1 was examined and Exts.P1 to P8 were marked for the complainant. No evidence was adduced on the side of the revision petitioner.

6. 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 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 of 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. As regards the sentence, 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 does not warrant any interference by this Court.

In the result, this revision petition stands dismissed. However, the revision petitioner is granted six months time to pay the fine. Needless to say that, if the revision petitioner had deposited any amount before the court in this case, the

revision petitioner needs to deposit only the remaining amount to comply with the direction of payment of fine.

Sd/-
B. SUDHEENDRA KUMAR
JUDGE

Scl.

True Copy

PA to Judge