

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

Crl.Rev.Pet.No. 3138 of 2009 ()

AGAINST THE JUDGMENT IN Crl.A 241/2009 of ADDITIONAL
SESSIONS COURT (ADHOC-I), ERNAKULAM DATED 27-07-2009

AGAINST THE JUDGMENT IN ST 1295/2004 of J.M.F.C.-I, KOCHI
DATED 17-3-2009

REVISION PETITIONER(S)/APPELLANT/ACCUSED::

M.P.VILASINI, AGED 46 YEARS,
PROPRIETRIX, GOLDEN INDUSTRIES, KEECHERI
PAPPINISSERI P.O., KANNUR DISTRICT.

BY ADV. SRI.P.M.PAREETH

RESPONDENT(S)/RESPONDENTS/COMPLAINANT::

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

2. MIHIR STEELS, 38/1519 A, K.V.VITTAPPA
PRABHU ROAD, ERNAKULAM, KOCHI-682035
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER
RAMESH KUMAR SONI, AGED 62 YEARS, S/O.KHETSE
RESIDING AT, 8/1723, KIKKIKAR ROAD
KOCHI - 682 002

R1 PUBLIC PROSECUTOR SRI. R. GITHESH
R2 BY ADVS. M/S.H.B.SHENOY, B.ASHOK SHENOY,
LAKSHMI B.SHENOY & ABU MATHEW

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 13-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Dated this the 13th day of October, 2015

ORDER

The revision petitioner is the accused in S.T. No. 1295 of 2004 on the files of the court of the Judicial Magistrate of First Class-I, Kochi. The trial Court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881, and sentenced her thereunder to simple imprisonment for one year and a fine of Rs. 2,58,160/-. 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 to pay an amount of Rs. 2,58,160/- to the complainant as compensation under Section 357 (3) Cr.P.C. Aggrieved by the said conviction and sentence, this revision petition has been filed.

2. Heard both sides.

3. The prosecution allegation is that towards the amount due to the complainant in connection with the business transaction, the revision petitioner issued Exts. P2 and P3 cheques in favour of the complainant. The complainant presented the said cheques for encashment. However, the same was dishonoured as the account was closed by the revision petitioner. Statutory notice was issued on behalf of the complainant, which was received by the revision petitioner. However, the revision petitioner did not pay the cheque amount within the statutory period or thereafter.

4. Before the trial court, PW1 was examined and Exts. P1 to P13 (a) were marked for the complainant. DW1 and DW2 were examined and Exts. D1 to D3 were marked for the revision petitioner.

5. PW1 had given evidence in support of the contentions in the complaint. The revision petitioner had stated in Ext. P13

reply notice that the entire amount covered by Ext. P11 notice was paid by the revision petitioner and the revision petitioner obtained valid cash receipt for the same from the complainant. Since the revision petitioner had pleaded discharge, it is her burden to show that there was discharge. However, there is no material before the court to indicate that the revision petitioner had discharged the liability due to the complainant. The courts below, after evaluating the oral and the documentary evidence, concurrently found that the revision petitioner executed Exts. P2 and P3 cheques as contemplated under Sec. 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. There is no material before the court to indicate that the said finding by the courts below is perverse or incorrect. In the said circumstances, the

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concurrent finding of the courts below that the revision petitioner committed the offence under Sec. 138 of the N.I.Act, does not warrant any interference by this Court. 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.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. To Judge