

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

Cr1.Rev.Pet.No. 3289 of 2009 ()

JUDGMENT IN CRA 590/2008 OF THE ADDITIONAL SESSIONS JUDGE (FAST
TRACK-II), ALAPPUZHA DATED 14.08.2009

JUDGMENT IN CC 387/2006 OF THE CHIEF JUDICIAL MAGISTRATE COURT,
ALAPPUZHA DATED 17.11.2008

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

P.SUNDARAM, AGED YEARS,
S/O. PARAMESWARAN PILLAI, SHIVA JEWELLERY
NEAR GANAPATHY KOVIL, MULLACKAL, ALAPPUZHA.

BY ADVS.SRI.E.RAFEEL
SRI.GOKUL DAS V.V.H.

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

1. C.M.KURIAN, AGED 69 YEARS,
GINU GARDENS, THONDANKULANGARA WARD, INDIRA JUNCTION
ALAPPUZHA.
2. THE STATE OF KERALA, REP. BY
CHIEF SECRETARY, THROUGH PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

R, BY ADV. SRI.S.SREEKUMAR
BY PUBLIC PROSECUTOR SRI. R. JITHESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 09-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No. 3289 of 2009

Dated this the 9th day of October, 2015.

ORDER

The revision petitioner is the accused in C.C.No.387 of 2006 on the files of the Court of the Chief Judicial Magistrate, Alappuzha.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him thereunder to imprisonment till the rising of the court and a fine of ₹50,000/- with a default clause for simple imprisonment for three months. It was further directed that in the event of realisation of fine, the entire amount shall be given to the complainant under Section 357 (1) (b) Cr.P.C. The appeal filed against the said conviction and sentence, was dismissed. 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 borrowed an amount of 50,000/- from the complainant and towards the discharge of the said 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 as the account was closed by the revision petitioner. Statutory notice was issued on behalf of the complainant, which was returned unserved 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 P6 were marked for the complainant. DW1 was examine for the revision petitioner.

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 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. 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 four months time to pay the fine.

Sd/-
B. SUDHEENDRA KUMAR
JUDGE

Scl.

True Copy

PA to Judge