

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

Crl.Rev.Pet.No. 209 of 2015 ()

CRA 254/2010 of I ADL.SESIONS COURT., THIRUVANANTHAPURAM
S.T.105/2008 of JMFC-V, THIRUVANANTHAPURAM (SPL.COURT-MARKLIST CASES)

REVISION PETITIONER/APPELLANT/ACCUSED:

VINCENT PERERA
S/O.KUNJACHAN, A.C.MECHANIC, ELECTRICAL AND A/C WING
SOUTHERN RAILWAY WING, CENTRAL RAILWAY STATION
THIRUVANANTHAPURAM.

BY ADV. SRI.SHAJIN S.HAMEED

RESPONDENTS/RESPONDENTS/STATE & COMPLAINANT:

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1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
 2. SHAJI WILFRED,
S/O.WILFRED, KINATTUVILAKAM VEEDU, VALIYATHURA
VALLAKADAVU P.O., THIRUVANANTHAPURAM
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
PILOMINA RAJU, KINATTUVILAKAM VEEDU, VALIYATHURA
VALLAKADAVU P.O., THIRUVANANTHAPURAM, PIN: 695 008.

R2 BY ADV. SRI.M.FATHAHUDEEN
R2 BY ADV. SRI.LATHEESH SEBASTIAN
R1 BY PUBLIC PROSECUTOR, SRI.V.S.SREEJITH

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

B.SUDHEENDRA KUMAR, J.

Crl.R.P.No.209 of 2015

Dated this the 9th day of September 2015

O R D E R

The revision petitioner is the accused in S.T. No.105 of 2008 on the files of the court of the Judicial Magistrate of First Class-V (Special court for Mark List cases), Thiruvananthapuram.

2. The court below convicted the accused under Section 138 of the Negotiable Instruments Act (for short 'the N.I. Act') and sentenced him thereunder to imprisonment till the rising of the court and a fine of Rs.55,000/- with a default clause for simple imprisonment for five months. In the appeal filed against the said conviction and sentence, the lower appellate court as per

judgment in CrI.Appeal No.254 of 2010 confirmed the conviction and sentence passed by the trial court under Section 138 of the N.I.Act. However, the default sentence was modified and reduced to one month. Aggrieved by the said conviction and sentence, the revision petitioner has filed this revision petition.

3. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

4. The prosecution allegation is that the revision petitioner borrowed an amount of Rs.3,00,000/- from the complainant and towards the discharge of the said liability, the revision petitioner issued six cheques. Ext.P3 is one of the said cheques issued by the revision petitioner towards the partial discharge of the liability of the revision petitioner to the complainant. Ext.P3 is for an amount of

Rs.50,000/- 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. However, the revision petitioner did not accept the said notice and hence the said notice was returned as unclaimed. The revision petitioner did not make payment of the cheque amount within the statutory period or thereafter.

5. Before the court below, PW1 and PW2 were examined and Exts.P1 to 8 were marked for the complainant. Ext.D1 was marked for the revision petitioner. The learned counsel for the revision petitioner has argued that PW1 is only the power of attorney holder of the complainant, who did not state in the complaint that

she had direct knowledge about the transaction in this case and in the said circumstances, it has to be held that PW1 had no direct knowledge with regard to the transaction and consequently, her evidence cannot be accepted to bring home the guilt of the revision petitioner. The learned counsel relied on the decision of the Apex Court in **Narayanan v. State of Maharashtra** [2013 (4) KLT 21 (SC)] to buttress his argument. In **Narayanan**(supra), in paragraph 26, it was held by the Apex Court that it is required by the complainant to make specific assertion as to the knowledge of the power of attorney holder in the transaction explicitly in the complaint and the power of attorney holder who has no knowledge regarding the transactions cannot be examined as a witness.

6. In this case, it is not mentioned in the complaint that the power of attorney holder was having direct knowledge with regard to the transaction in this case. However, an affidavit was also filed by the power of attorney holder of the complainant in which it is clearly stated that the power attorney holder had direct knowledge regarding the facts of the case. Both the complaint and the affidavit were filed before the court on the same day. Therefore, the statement in the affidavit filed along with the complaint that the power of attorney holder was having direct knowledge with regard to the transaction, is sufficient to comply with the direction of the Supreme Court in **Narayanan**(supra). In the said circumstances, the argument advanced by the learned counsel for the revision petitioner in this regard fails.

7. The learned counsel has further argued that the revision petitioner was not served with the notice issued on behalf of the complainant and in the said circumstances, he is entitled to acquittal. Ext.P6 is the registered letter addressed to the revision petitioner. There is an endorsement by the postal authority in Ext.P6 to the effect that intimation was given to the revision petitioner. There is another endorsement to the effect that the said letter was “unclaimed”. In the said circumstances, the same was returned as “unclaimed” by the postal authorities. In the absence of any material before the court inconsistent with the endorsement in Ext.P6, it has to be held that there was deemed service of notice on the revision petitioner. In the said circumstances, the argument in this regard advanced by the learned counsel for the revision petitioner, cannot be

accepted.

8. PW1 clearly stated about the transaction involved in this case. The courts below, relying on the oral and documentary evidence adduced by the complainant, concurrently found that the revision petitioner executed Ext.P3 cheque as contemplated under Section 138 of the N.I. Act. 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. Having gone through the relevant inputs, I do not find any reason to interfere with the concurrent finding of the courts below that the revision petitioner committed the offence under Section 138 of the N.I. Act.

9. The sentence awarded by the courts below is also very reasonable. In the said circumstances, I find no

reason to interfere with the sentence as well.

In the result, this revision petition stands dismissed. The revision petitioner is granted three months time to make payment of the fine as requested by the learned counsel for the revision petitioner.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

dl

True copy /

PA to Judge

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