

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

Crl.Rev.Pet.No. 394 of 2015 ()

JUDGMENT IN CRA 7/2014 OF THE ADDITIONAL SESSIONS COURT ERNAKULAM
DATED 18-11-2014

JUDGMENT IN CC 438/2012 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE
(E.O), ERNAKULAM DATED 09-12-2013

REVISION PETITIONER/PETITIONER/ APPELLANT/ ACCUSED:

JEEVAN BOSE, AGED 49 YEARS,
S/O DHAMODHARAN, KALASSERY HOUSE, CHERTHALA SOUTH
CHERTHALA TALUK, ALAPUZHA ALAPZHA DISTRICT

BY ADVS.SRI.JOHN JOSEPH(ROY)
SRI.JOHNSON T. JOHN

RESPONDENT(S)/RESPONDENTS/ COMPLAINANT & STATE:

1. GILROY JOHN LUIZ, AGED 55 YEARS
S/O ANTONY WILLIAM LUIZ, LUIZ ESTATE, KALAMASSERY
KALAMASSERY P.O, ERNAKULAM DISTRICT PIN 683104
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI 31

R1 BY ADV. SRI.A.B.JALEEL
R BY PUBLIC PROSECUTOR SRI.R.GITESH

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. 394 of 2015

Dated this the 7th day of October, 2015.

ORDER

The revision petitioner is the accused in C.C.No.438 of 2012 on the files of the Court of the Additional Chief Judicial Magistrate (Economic Offence), Ernakulam.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him thereunder to pay a fine of ₹8,00,000/- with a default clause for simple imprisonment for six months. Appeal filed against the said conviction and sentence, was dismissed. However, there was a direction in the appeal to pay the entire amount of fine to the complainant under Section 357 (1) (b) Cr.P.C. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard both sides.

4. The prosecution allegation is that towards the discharge of the amount due to the complainant from the

revision petitioner, 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 due to the insufficiency of funds in the account of 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 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 P5 were marked for the complainant. DW1 and DW2 were examined and Ext.C1 was marked 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 by 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 courts below had taken a very lenient view in the matter of sentence. In the said circumstances, I find no reason to interfere with the sentence awarded by the courts below as well.

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 any amount had been already deposited by the revision petitioner before the court below in this case, the revision petitioner needs to pay only the remaining amount to comply with the direction of

payment of fine. If any amount is deposited, the first respondent herein shall be at liberty to withdraw the same.

Sd/-
B. SUDHEENDRA KUMAR
JUDGE

Scl.

True Copy

PA to Judge