

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

Cr1.Rev.Pet.No. 839 of 2013 ()

JUDGMENT IN Cr1.A 223/2011 OF THE II ADDITIONAL SESSIONS COURT,
PALAKKAD DATED 25-02-2013
JUDGMENT IN CC 125/2004 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
MANNARKKAD DATED 02-04-2011

REVISION PETITIONER/APPELLANT/ACCUSED :

HARSHAL, AGED 36 YEARS
S/O. MUHAMMED ISMAIL, PULIYANTHINGAL HOUSE
VETTOM P.O., CHERPUVETOM, THIRUR
MALAPPURAM DISTRICT.

BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENTS/RESPONDENTS/STATE AND COMPLAINANT :

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1. KUNHIMOITHU HAJI, AGED 59 YEARS
S/O. VEERANKUTTY, THAZHATHETHIL HOUSE
PERIMBADARI POST, MANNARKKAD, PALAKKAD-678 582.
 2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 27-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.839 of 2013

Dated this the 27th day of October, 2015.

ORDER

The revision petitioner is the accused in C.C.No.125 of 2004 on the files of the Court of the Judicial Magistrate of First Class, Mannarkkad.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him thereunder to simple imprisonment for four months and a fine of ₹50,000/- with a default clause for simple imprisonment for one month. In the appeal, the conviction was confirmed and the sentence was modified and reduced to imprisonment till the rising of the court and to pay a compensation of ₹50,000/- to the complainant under Section 357(3) Cr.P.C. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard the learned counsel for the petitioner.

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 due to the insufficiency of funds in the account of the revision petitioner. Statutory notice was issued to the revision petitioner. However, the said notice was returned as unclaimed as the revision petitioner refused to accept the same even after the receipt of intimation from the postal authorities. The revision petitioner did not pay the cheque amount within the statutory period or thereafter.

5. Before the trial court, PW1 was examined and Exts.P1 to P5 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. The appellate court had taken a very lenient view in the matter of sentence. Therefore, 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 suffer the sentence ordered by the appellate court.

Sd/-
B. SUDHEENDRA KUMAR
JUDGE