

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

Cr1.Rev.Pet.No. 853 of 2013 ()

AGAINST THE JUDGMENT IN CRA 408/2012 of ADDL.SESIONS
COURT (ADHOC)-II, ERNAKULAM DATED 22-01-2013
AGAINST THE JUDGMENT IN CC 28/2008 of J.M.F.C. - II,
PERUMBAVOOR DATED 03-05-2012

REVISION PETITIONER(S) /
REVN.PETITIONER/APPELLANT/ACCUSED :

V.K.PAREED
S/O. SRI.KUNJEEENPILLA,
VELLAPPILLY HOUSE, KANJIRAKKADU
RAYONPURAM P.O., PERUMBAVOOR.

BY ADVS.SRI.M.RAMESH CHANDER (SR.)
SRI.ANEESH JOSEPH

RESPONDENT(S) /RESPONDENTS/RESPONDENTS/COMPLAINANT :

1. VARGHESE PAUL, AGED 54 YEARS
S/O. PAILY, KAKKATTUKUDY HOUSE, B.O.C.ROAD
PERUMBAVOOR.

2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.

R1 BY ADV. SRI.P.THOMAS GEEVERGHESE
R2 BY PUBLIC PROSECUTOR SRI. V.S. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 28-10-2015, THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
Crl.R.P. No. 853 of 2013
.....

Dated this the 28th day of October, 2015

ORDER

The revision petitioner is the accused in C.C. No. 28 of 2008 on the files of the court of the Judicial Magistrate of First Class-II, Perumbavoor. The trial Court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him thereunder to simple imprisonment for three months and to pay an amount of Rs. 8,00,000/- to the complainant as compensation under Section 357 (3) Cr.P.C with a default clause for simple imprisonment for three months. In the appeal filed against the said conviction and sentence, 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 Rs. 8,00,000/- to the complainant 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 the revision petitioner borrowed an amount of 7,00,000/- from the complainant for his personal need and towards the discharge of the said liability, the revision petitioner executed Ext. P1 cheque in favour of the complainant. 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 on behalf of the complainant, which was returned as "unserved" as the revision petitioner refused to accept the same even after the intimation from the postal authorities. 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 P5 were marked for the complainant. No evidence was adduced on the side of the defence.

5. 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 turned down 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 appreciation of evidence 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 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. Therefore, the sentence awarded by the appellate court also does not call for any interference by this Court.

Crl.R.P. No. 853 of 2013

In the result, this Revision Petition stands dismissed. However, the revision petitioner is granted six months' time to pay the compensation ordered by the courts below.

Dated this the 28th day of October, 2015.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

/truecopy/

P.S. To Judge

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