

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

Crl.Rev.Pet.No. 628 of 2015 ()

(JUDGMENT IN CRA 209/2010 OF ADDITIONAL DISTRICT & SESSIONS COURT
(ADHOC)-I, KOLLAM DATED 30-03-2013

JUDGMENT IN CC 45/2009 OF JUDICIAL FIRST CLASS MAGISTRATE-IV, PUNALUR
DATED 26-04-2010

REVISION PETITIONER/APPELLANT/ACCUSED:-:

POOKUNJU, AGED 66 YEARS
SON OF LATE HASSANKUNJU, ILLIKULATHU HOUSE
KANNAMPALLY BHAGAM, KEERIKKAD VILLAGE, KAYAMKULAM P.O.
ALLEPPEY - 690 502.

BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR

RESPONDENTS/RESPONDENTS/COMPLAINANT AND THE STATE:-:

- 1. BENNY S.
SHERLY BHAVAN, CHELIKUZHY P.O.
PATTAZHY VADAKKEKARA VILLAGE, PATHANAPURAM TALUK
KOLLAM DISTRICT, PIN - 689 695.
2. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

R1 BY ADV. SRI.BIMAL K.NATH
R1 BY ADV. SRI.SREEVALSAN.V
R1 BY ADV. SMT.M.K.SHIMI
R1 BY ADV. SRI.D.SREENATH
R1 BY ADV. SMT.DIVYA C BALAN
R BY PUBLIC PROSECUTOR SRI.R.GITESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 30-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No. 628 of 2015

Dated this the 30th day of September, 2015.

ORDER

The revision petitioner is the accused in C.C.No.45 of 2009 on the files of the court of the Judicial Magistrate of First Class-IV, Punalur.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him thereunder to simple imprisonment for one month and to pay a compensation of Rs.3,80,000/- to the complainant under Section 357(3) Cr.PC. In the appeal filed against the said conviction and sentence, the Additional Sessions Court (Adhoc)-I, Kollam confirmed the conviction and modified the sentence to imprisonment till the rising of the court and a compensation of Rs.3,80,000/- to the de complainant under Section 357(3) 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 the revision petitioner borrowed an amount of ₹3,75,000/- from the complainant, agreeing to repay the same within one month 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 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 was examined and Exts.P1 to P5 were marked for the complainant. DW1 was examined for the defence.

6. After evaluating the oral and documentary evidence adduced by the parties, the courts below 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.

The appellate court had taken a very lenient view in the matter of sentence. In the said circumstances, I find no reason to interfere with the sentence as well.

In the result, this revision petition stands dismissed. However, the revision petitioner is granted six months time to pay the compensation as requested by the learned counsel. Needless to say that, if any amount is deposited by the

revision petitioner, the complainant is entitled to receive the same.

Sd/-

**B. SUDHEENDRA KUMAR
JUDGE**

Scl.

True Copy

PA to Judge