

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

Cr1.Rev.Pet.No. 3907 of 2009 ()

JUDGMENT IN Cr1.A 576/2007 OF THE SESSIONS COURT, THIRUVANANTHAPURAM

JUDGMENT IN ST 1052/2006 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT-IX, THIRUVANANTHAPURAM

REVISION PETITIONER/APPELLANT/ACCUSED:

DR.P.STANLEY JOHN,
STANLEY MULTI SPECIALITY HOSPITAL, UDIYANKULANGARA
NEYYATTINKARA TALUK.

BY ADVS.SRI.L.MOHANAN
SMT.LIGEY ANTONY

RESPONDENTS/STATE & COMPLAINANT:

1. STATE OF KERALA-REPRESENTED BY
PUBLIC PROSECUTOR.
2. N.SIVARAMAKRISHNAN,
T.C.38/2970, LEKSHMI BHAVAN, NEAR ARYASALA SCHOOL ROAD
THIRUVANANTHAPURAM.

R2 BY ADV. SRI.M.BALAGOVINDAN
R2 BY ADV. SRI.T.K.ANANDA PADMANABHAN
R1 BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 06-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.3907 of 2009

Dated this the 6th day of November, 2015

ORDER

The revision petitioner is the accused in S.T.No.1052 of 2006 on the files of the Court of the Judicial Magistrate of First Class - IX, Thiruvananthapuram.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him thereunder to simple imprisonment for six months and a fine of ₹4,60,000/-. In the appeal, the conviction was confirmed and the sentence was modified and reduced to imprisonment till the rising of the court and a fine of ₹4,60,000/- with a default clause for simple imprisonment for five months. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard.

4. The prosecution allegation is that towards the

discharge of the liability of the revision petitioner to the complainant, 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 the insufficiency of funds in the account of the revision petitioner. Statutory notice was issued on behalf of the complainant to the revision petitioner, which was received by the revision petitioner. However, 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 P7 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 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 appellate court had taken a very lenient view in the matter of sentence. Therefore, the sentence awarded by the appellate court also does not warrant any interference by this Court.

In the result, this revision petition stands dismissed. However, the revision petitioner is granted six months to pay the fine.

I make it clear that, the amount, if any deposited by the revision petitioner before the trial court in connection with this

case, will be treated as part payment of the amount of fine ordered by the appellate court.

Sd/-
B. SUDHEENDRA KUMAR
JUDGE

Scl/7.11.2015

True Copy

PA to Judge