IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

Crl.Rev.Pet.No. 1020 of 2013 ()

CRL.A 611/2012 of SPECIAL ADDITIONAL SESSIONS COURT
(MARADU CASES)KOZHIKODE
ST 48/2006 of J.M.F.C.-IV,KOZHIKODE

REVISION PETITIONER/ACCUSED:

SHEELA JOY, AGED 44 YEARS
W/O.V.K.JOY, VELAM PLAKKAL HOUSE, EDAVATTY P.O.
THODUPUZHA, IDUKKI DISTRICT.

BY ADVS.SRI.K.R.SUNIL
SRI.BINDU SREEKUMAR

RESPONDENT/COMPLAINANT:
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1. SHRIRAM INVESTMENT LTD.
REP. BY POWER OF ATTORNEY HOLDER, PRAKASH
S/O.K.MADHAVAN, AGED 27, SREEPADAM BUILDINGS
CALICUT - 673 032.

2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

R1 BY ADV. SRI.RAJESH NAMBIAR
R2 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28-9-2015, THE COURT ON 19-10-2015 PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

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Crl.R.P. No.1020 of 2013

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Dated this the 19th day of October 2015

O R D E R

The revision petitioner is the accused in S.T. No.48 of 2006 on the files of the court of the Judicial Magistrate of First Class - IV, Kozhikode.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act (for short 'the N.I.Act') and sentenced him thereunder to simple imprisonment for three months and to pay a compensation of Rs.3,80,000/- to the complainant under Section 357(3) Cr.P.C. In the appeal, the appellate court confirmed the conviction and modified and reduced the sentence to a fine

of Rs.5,00,000/-. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard.

4. The prosecution allegation is that the revision petitioner issued Ext.P3 cheque to the complainant towards the discharge of the liability of the revision petitioner to 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 to the revision petitioner, 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 trial court, PW1 and PW2 were examined and Exts.P1 to P10 series were marked for the complainant. Exts.D1 and D2 were marked for the revision petitioner.

6. It is in the evidence of PW1 that a total amount of Rs.24,00,000/- was advanced by the complainant to the revision petitioner for purchasing two vehicles. PW1 stated that in respect of the payment of the amount by the revision petitioner, an account statement is maintained. He further stated that the revision petitioner paid an amount of Rs.44,600/-. The revision petitioner had a contention that at the time of availing the loan, the revision petitioner had entrusted eight signed blank cheques with the complainant and one of the said cheques had been mis-utilised by the

complainant to file the present complaint.

7. During the examination of PW2, Ext.P10 statement of account had been produced. PW2 admitted that Ext.P10 would not disclose the amount due as on the date of issuance of Ext.P3 cheque. Ext.P10 was not produced along with the complaint. It was produced only on 1.8.2012, which was the date of examination of PW2. In Ext.P10, the account details are not stated date-wise. An amount of Rs.3,94,670/- is shown as the finance charge as per Ext.P10. Ext.P10 is not the statement of account of the complainant and it can at the best be considered as the summary of the account prepared by the complainant. It is not discernible as to why the statement of account of the revision petitioner could not be produced even though the

revision petitioner had a contention that the amount covered by Ext.P3 cheque was not due as on the date of issuance of the cheque. There is no material before the Court to show the amount actually due as on the date of issuance of Ext.P3 cheque. The evidence of PW1 and PW2 and Ext.P10 are not sufficient to hold that the amount covered by Ext.P3 cheque was due to the complainant as on the date of issuance of Ext.P3 cheque. Even though PW1 stated that the revision petitioner paid an amount of Rs.44,600/-, Ext.P10 would show that an amount of Rs.24,600/- alone was paid by the revision petitioner as per Ext.P10. This would show that Ext.P10 cannot be correct. Even though an amount of Rs.3,94,670/- is shown as the finance charge in Ext.P10, it is not shown therein as to how the said amount was arrived at. Having gone through the relevant inputs, it appears that Ext.P10 can only be a document created by the complainant for the purpose of showing that the amount covered by Ext.P3 cheque was due to the complainant as on the date of issuance of the Ext.P3 cheque. There is absolutely no material before the court to show that the amount covered by Ext.P3 cheque was due as on the date of issuance of Ext.P3 cheque. In the said circumstances, the contention of the defence appears to be more probable and consequently, the conviction and sentence passed by the courts below under Section 138 of N.I. Act, cannot be sustained.

In the result, this revision petition stands allowed setting aside the conviction and sentence passed by the courts below under Section 138 of N.I. Act and the revision petitioner is acquitted for the offence under Section 138 of the N.I. Act. The bail bond of the revision petitioner stands cancelled and he is set at liberty.

Sd/-

B.SUDHEENDRA KUMAR,
JUDGE

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PA to Judge