

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

Crl.Rev.Pet.No. 295 of 2014 ()

CRA 460/2011 of ADDL. SESSIONS COURT - V, KOTTAYAM
ST 105/2011 of J.M.F.C-III, KANJIRAPPALLY

REVISION PETITIONER/APPELLANT/ACCUSED:

JOSE.M.A. @ JOSE AGED 46 YEARS
S/O. APHREM, KIZHAKKEKARA HOUSE, KIZHAKKEKARA
NEAR MALANKARA CHRISTIAN CHURCH, UDUMBANOOR KARA
KAROMANOOR VILLAGE, THODUPUZZHA TALUK.

BY ADVS.SRI.K.S.HARIHARAPUTHRAN
SRI.M.D.SASIKUMARAN
SRI.GEORGE MATHEW
SRI.P.A.ISMAIL
SRI.SUNIL KUMAR A.G
SRI.DIPU JAMES

RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE:

1. K.A. JOSEPH, AGED 93 YEARS
S/O. AGUSTHY, KUREKKATTU HOUSE, VELLICHYANI BHAGOM
EDAKKUMNNAM VILLAGE, KANJIRAPPILLY TALUK
KOTTAYAM DISTRICT-686507.

2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-31.

R1 BY ADV. SRI.LIJJ.VADAKEDOM
R2 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
29-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.295 of 2014

Dated this the 29th day of September 2015

O R D E R

The revision petitioner is the accused in S.T.No.105 of 2011 on the files of the Court of the Judicial Magistrate of First Class-III, Kanjirappilly.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I.Act') and sentenced him thereunder to simple imprisonment for one year and to pay a compensation of Rs1,65,000/- to the complainant under Sec.357(3) Cr.P.C. with a

default clause for simple imprisonment for six 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.1,65,000/- to the complainant under Section 357(3) Cr.P.C. with a default clause for simple imprisonment for six months. Aggrieved by the said conviction and sentence, the revision petitioner has filed this revision petition.

3. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

4. The prosecution allegation is that the complainant paid a total amount of Rs.1,65,000/- to the revision petitioner for arranging a job for the grandson of

the complainant in Thottamvila Gavekshana Kendra. The above said amount was paid for depositing the same in the above said Kendra as the condition precedent to get the job. However, the revision petitioner did not deposit the said amount with Thottamvila Gavekshana Kendra. The grandson of the complainant did not get the job also. 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 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 court below, PW1 was examined and Exts.P1 to P6 were marked for the complainant. No evidence was adduced on the side of the defence.

6. The courts below, relying on the documentary as well as oral 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. Since there is concurrent finding on facts, this Court will not be justified in interfering with the same unless the finding of the courts below is perverse or incorrect. No circumstance has been brought to my notice to indicate that the appreciation of evidence by the courts below was 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 the 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. In the said circumstances, the sentence awarded by the appellate court also does not call for any interference by this court.

In the result, this revision petition stands dismissed.

However, the revision petitioner is granted six months to pay the compensation as requested by the learned counsel.

Sd// B.SUDHEENDRA KUMAR, JUDGE.

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/ True copy /

