

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

Crl.Rev.Pet.No. 2134 of 2010 ()

AGAINST THE JUDGMENT IN CRA 153/2009 of ADDITIONAL SESSIONS
COURT (ADHOC-I) ERNAKULAM
AGAINST THE JUDGMENT IN CC 740/2005 of J.M.F.C.-I
MUVATUPUZHA DATED 06-02-2009

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

T.G.ISSAD, S/O.T.M.YOOSUFF,
THETILAMARI VEEDU, MARKET P.O., MUVATTPUZHA.

BY ADVS.SRI.C.M.TOMY

SRI.K.J.JOSEMON
SRI.MATHEW SKARIA

RESPONDENT(S)/COMPLAINANT AND STATE:

1. K.V.MATHAI, MANAGER,
SOUTHERN AUTO FINANCE, MUVATTUPUZHA-686 661.

2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R1 BY ADV. SRI.A.T.ANILKUMAR AND ADV. SMT.V.SHYLAJA
R2 BY PUBLIC PROSECUTOR SRI. R. GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 30-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Dated this the 30th day of October, 2015.

ORDER

The revision petitioner is the accused in C.C. No. 740 of 2005 on the files of the court of the Judicial Magistrate of First Class, Muvattupuzha. 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 ₹1,14,872/- to the complainant as compensation under Section 357 (3) Cr.P.C. 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 fine of ₹1,14,872/- with a default clause for simple imprisonment for one month. Aggrieved by the said conviction

and sentence, this revision petition has been filed.

2. The prosecution allegation is that towards the discharge of the liability to the complainant, the revision petitioner executed Ext. P6 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. The revision petitioner did not pay the cheque amount within the statutory period or thereafter.

3. Before the court below, PW1 was examined and Exts. P1 to P16 were marked for the complainant. Exts.D1 to D4 were marked on the side of the revision petitioner.

4. After evaluating the oral and documentary evidence adduced by the parties, the courts below concurrently found that the revision petitioner executed Ext. P6 cheque as

contemplated under Section 138 of the N.I. Act. The defence set up by the revision petitioner was 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 appreciation of evidence by the courts below is perverse or incorrect. In the said circumstances, the concurrent finding of 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 warrant any interference by this Court.

In the result, this Revision Petition stands dismissed.

I make it clear that the payment directly made to the complainant will be treated as sufficient compliance of payment

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of fine provided the complainant files an affidavit in this regard before the trial Court.

Dated this the 30th day of October, 2015.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

Ani/31-10-2015

/true copy/

P.S. To Judge