

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

Crl.Rev.Pet.No. 966 of 2015 ()

AGAINST THE JUDGMENT IN CRA 261/2013 of ADDL. DISTRICT &
SESSIONS COURT – II, NORTH PARAVUR DATED 24-06-2015

AGAINST THE ORDER IN ST 81/2013 of J.M.F.C. – II, NORTH PARAVUR

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

YESUDAS @ MARTIN
S/O MATHEW, KOIKKARAN PARAMBIL HOUSE, NYARAMBALAM PO
ERNAKULAM, PIN-682 509

BY ADV. SRI.T.N.SURESH

RESPONDENT(S)/COMPLAINANT & STATE:

1. SUNIL SANTHOSH
S/O LATE SANTHOSH, RAMADI HOUSE, CHERAI PO
ERNAKULAM, -683 514

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA ERNAKULAM 682 031

R1 BY ADV. SRI.P.M.BENZIR, ADV. SRI.G.G.MANOJ &
BY ADV. SRI.JAICE JACOB
BY PUBLIC PROSECUTOR SRI. JUSTIN JACOB

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 03-09-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
Crl.R.P. No. 966 of 2015
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Dated this the 3rd day of September, 2015

ORDER

The revision petitioner is the accused in S.T. No. 81 of 2013 on the files of the Court of the Judicial Magistrate of First Class-II, North Paravur .

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 (“the N.I.Act” for short) and sentenced him thereunder to simple imprisonment for six months and a fine of ₹ 1,82,000/-. The appeal filed against the said conviction and sentence was dismissed by the Addl. Sessions Court, North Paravur, as per judgment dated 24-6-2015 in Crl.Appeal No. 261 of 2013. Aggrieved by the said conviction and sentence, this Revision Petition was filed.

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

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4. The prosecution allegation is that the revision petitioner borrowed an amount of ₹ 1,82,000/- from the complainant and towards the discharge of the said liability, the revision petitioner issued Ext. P2 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. The complainant himself got examined as PW1 and Exts. P1 to P7 were marked for the complainant before the trial court. No evidence was adduced on the side of the defence. The courts below, relying on the documentary as well as oral evidence adduced by the complainant, concurrently found that the revision petitioner had executed Ext.P2 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 is perverse or incorrect. No circumstance has been brought to my notice to indicate that the appreciation of evidence by the courts

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below was perverse or incorrect. The courts below found the revision petitioner guilty under Section 138 of the N.I.Act and convicted him thereunder. Having gone through the relevant inputs, I do not find any reason to disturb the finding of the courts below that the revision petitioner committed the offence under Section 138 of the N.I.Act.

6. As regards the sentence, the learned counsel for the revision petitioner pleaded for leniency. It appears that the cheque is for Rs. 1,82,000/- (Rupees one lakh eighty two thousand only). Considering the facts and circumstances of the case including the amount covered by Ext. P2 cheque, I am of the view that leniency can be shown in the matter of sentence and accordingly, I order so.

In the result, this revision petition stands allowed in part,

- (i) confirming the verdict of guilty and conviction passed by the courts below under Section 138 of the N.I. Act,
- (ii) the sentence awarded by the courts below stands modified and reduced to imprisonment till the the rising of the court and a fine of Rs.1,82,000/- (Rupees

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one lakh eighty two thousand only).

- (iii) in default of payment of fine, the revision petitioner shall undergo simple imprisonment for two months.
- (iv) in the event of realisation of the fine amount, the entire amount shall be given to the complainant as compensation under Section 357(1) (b) Cr.P.C.
- (v) The revision petitioner is granted 6 months time to comply with the direction of payment of fine in this order.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. to Judge