

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

Crl.Rev.Pet.No. 1055 of 2015 ()

AGAINST THE JUDGMENT IN CRA 451/2010 of ADDL.SESIONS
COURT - I, THALASSERY, DATED 30-10-2014

AGAINST THE ORDER IN ST 1977/2009 of J.M.F.C.-II, KANNUR

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

M. VIDHYADHARAN AGED 55 YEARS
S/O.CHANDUKUTTY NAMBIAR, MANIKKOTH HOUSE
KALLIASSERY P.O., KANNUR.

BY ADV. SRI.T.MANOJ KUMAR

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:

1. K.V. SASIDHARAN, AGED 44 YEARS
S/O.T.V.NARAYANAN, KIZHAKKEVEETIL HOUSE
KALARIVATHUKKAL, P.O.VALAPATTANAM, KANNUR-670010.

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.

R1 BY ADV. SRI.P.U.SHAILAJAN
BY PUBLIC PROSECUTOR SRI.JUSTIN JACOB

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 02-09-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
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.....

Dated this the 2nd day of September, 2015

ORDER

The Revision Petitioner is the accused in S.T.No.1977 of 2009 on the files of the Court of the Judicial Magistrate of First Class – II, Kannur. The revision Petitioner was convicted under Section 138 of the Negotiable Instruments Act, 1881 (for short “the N.I.Act”) by the trial Court and sentenced to simple imprisonment for three months and to pay compensation of ₹60,000/- to the complainant under Sec. 357 (3) Cr.P.C. with a default clause of simple imprisonment for two months.

2. Against the said conviction and sentence, the revision petitioner filed appeal before the Sessions Court, Thalassery. As per judgment dated 30.10.2014 in Crl.Appeal No.451/2010, the Sessions Court confirmed the said conviction and modified the

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sentence to imprisonment till rising of the Court and a fine of ₹60,000/- under Section 138 of the N.I.Act. Aggrieved by the said conviction and sentence, the accused before the trial court has filed this Crl. Revision Petition.

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

3. The prosecution allegation is that the revision petitioner borrowed an amount of ₹60,000/- from the complainant and towards the discharge of the said liability, the revision petitioner issued Ext. P1 cheque in favour of the complainant. The complainant presented the 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 pay the cheque amount within the statutory period or thereafter.

3. Before the trial court, the complainant himself got

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examined as PW1 and Exhibits P1 to P6 were marked for the complainant. No evidence was adduced on the side of the revision petitioner. After evaluating the evidence, the courts below found the revision petitioner guilty under Sec. 138 of the N.I.Act. There is concurrent finding by the courts below with regard to the guilt of the revision petitioner under Sec. 138 of the N.I. Act. The courts below relied on the documentary as well as oral evidence to come to a conclusion that the appellant 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 appreciation of evidence by the courts below was perverse or incorrect. In the said circumstances, the finding of the courts below that the revision petitioner committed the offence under Section 138 of the N.I.Act

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does not call for any interference by this Court.

4. The appellate court had taken a very lenient view in the matter of sentence. Considering the facts and circumstances of the case, I do not find any reason to interfere with the sentence awarded by the appellate court as well.

In the result, this revision petition stands dismissed. However, the revision petitioner is granted six months' time to deposit the amount as requested by the learned counsel for the revision petitioner.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. to Judge