

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1068 of 2015 ()

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AGAINST THE JUDGMENT IN CRA 533/2010 of ADDL.SESIONS COURT - IV,  
THALASSERY DATED 30-03-2015

AGAINST THE JUDGMENT IN ST 655/2008 of ADDL.CHIEF JUDICIAL  
MAGISTRATE, THALASSERY DATED 26-11-2010

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

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SAKKIR A.P. AGED 39 YEARS  
S/O.ABOOBACKER, ANWAR VILLA, KURUCHIYIL P.O.  
THALASSERY, KANNUR DISTRICT.

BY ADVS.SRI.C.P.PEETHAMBARAN  
SMT.MINI.V.A.

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:

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1. RAFEEL K.  
S/O.ABOOBACKER, C.M.HOUSE, P.O.PANOR  
KANNUR DISTRICT 670 692.

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

R1 BY ADV. SRI.SATHEESHAN ALAKKADAN  
BY PUBLIC PROSECUTOR SRI. R. GITESH

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

**B. SUDHEENDRA KUMAR, J.**

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**Dated this the 28<sup>th</sup> October, 2015**

**ORDER**

The revision petitioner is the accused in S.T. No. 655 of 2008 on the files of the court of the Addl. Chief Judicial Magistrate, Thalassery. The trial Court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881, and sentenced him thereunder to simple imprisonment for six months and to pay an amount of Rs. 10,10,000/- to the complainant as compensation under Section 357 (3) Cr.P.C. with a default clause for simple imprisonment for three 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. 10,10,000/- to the complainant under Section 357 (3) Cr.P.C. Aggrieved by the said conviction and

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sentence, this revision petition has been filed.

2. Heard both sides.

3. The prosecution allegation is that the revision petitioner borrowed an amount of 10,00,000/- from the complainant and towards the discharge of the said liability, the revision petitioner executed 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 on behalf of the complainant, which was returned as unclaimed as the revision petitioner refused to accept the same even after the receipt of intimation from the postal authorities. The revision petitioner did not pay the cheque amount within the statutory period or thereafter.

4. Before the trial court, PW1 was examined and Exts. P1 to P5 were marked for the complainant. DW1 and DW2 were

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examined and Exts. D1 to D6 were marked on behalf of the defence.

5. After evaluating the oral and documentary evidence adduced by the parties, the courts below concurrently found that the revision petitioner executed Ext. P1 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. As regards the sentence, the appellate court had taken a very lenient view.

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Therefore, 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 three months' time to pay the compensation.

I make it clear that the payment directly made to the complainant will be treated as sufficient compliance of payment of compensation, provided an affidavit in this regard shall be filed by the complainant before the trial Court.

Dated this the 28<sup>th</sup> day of October, 2015.

Sd/-B. SUDHEENDRA KUMAR,  
JUDGE.

/truecopy/

P.S. To Judge