

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. 1104 of 2015 ()

AGAINST THE JUDGMENT IN CRA 196/2013 of THE DISTRICT
COURT, THIRUVANANTHAPURAM DATED 06-08-2014

AGAINST THE JUDGMENT IN ST 3209/2009 of J.M.F.C.I, VARKALA
DATED 30-04-2013

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

JAFAR, S/O. MEERA SAHIB,
BEENA MANZIL, PALLIMUKKU, KADAKKAL PO
KOLLAM.

BY ADVS.SRI.K.JAGADEESH
SMT.V.RENJU

RESPONDENT(S)/RESPONDENT/COMPLAINANT AND STATE:

1. M/S.SREE GOKULAM CHITS & FINANCIERS LTD.
HAVING ITS HEAD OFFICE AT SREE
GOKULAM TOWERS NO.66(O.NO.356)
ARCOT ROAD, CHENNAI -6000 024
REPRESENTED BY ASSISTANT MANAGER SRI. V.AJAY.

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

BY ADV. SRI.K.S.BABU & ADV. SMT. N. SUDHA
BY PUBLIC PROSECUTOR SRI. R. GITESH

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.

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Dated this the 29th day of September, 2015

ORDER

The Revision Petitioner is the accused in S.T. 3209 of 2009 on the files of the Court of the Judicial Magistrate of First Class – I, Varkala.

2. 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 thereunder to imprisonment till the rising of the court and to pay an amount of 68,000/- with 9% per annum to the complainant with a default clause for simple imprisonment for six months. The appeal filed against the said conviction and sentence was dismissed by the appellate court. Aggrieved by the said conviction and sentence,

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this Revision Petition has been filed.

3. Heard both sides

4. The prosecution allegation is that the revision petitioner was a subscriber of a chit conducted by the complainant. The chit was bid by the revision petitioner and he received the chit amount. Thereafter, he failed to pay the chit instalments. Towards the discharge of the liability under the above said transaction, the revision petitioner issued Ext. P2 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.

5. Before the trial court, PW1 was examined and Exts. P1 to P7 were marked for the complainant. Exts. D1 to D1(b) were

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marked for the defence.

6. PW1 had given evidence in tune with the contentions in the complaint. According to him, the accused issued Ext. P2 cheque in favour of the complainant towards the discharge of the liability of the accused in connection with the repayment of the chitty instalments.

7. The learned counsel for the revision petitioner argued that there is no material before the court to show that the amount covered by Ext. P2 cheque was due as on the date of Ext. P2 cheque and in the said circumstances, it has to be held that the execution of Ext. P2 is not proved by the complainant. The amount covered by Ext. P2 cheque is Rs. 1,25,000/-. PW2 stated that he did not produce the document pertaining to the transaction involved in this case. The revision petitioner had a contention that the revision petitioner had entrusted a blank signed cheque with the complainant at the time of receiving the chitty amount and the said cheque had been misutilised to file the

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present complaint. According to the revision petitioner, the amount covered by Ext.P2 cheque was not due from the revision petitioner to the complainant as on the date of issue of Ext. P2 cheque.

8. PW1 stated that the revision petitioner received only an amount of Rs. 1,25,000/- as the prize in the chit. P.W1 admitted that an amount of Rs. 68,000/- alone was due to the complainant from the revision petitioner as on 13-2-2009. If that be so, it is not discernible as to how an amount of Rs. 1,25,000/- was due to the complainant from the revision petitioner as on 27-07-2009, the date of the cheque. Eventhough the revision petitioner had a contention that the amount covered by Ext. P2 cheque was not due to the complainant from the accused as on the date of issue of Ext. P2 cheque, the complainant did not produce the account statement of the chit transaction involved in this case. No material is available before the Court to show that the amount covered by Ext. P2 was due to the complainant from the revision

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petitioner as on the date of Ext. P2 cheque and consequently, the defence set up by the revision petitioner that a blank signed cheque entrusted by the revision petitioner with the complainant at the time of receiving the chit amount had been mis-utilised to file the present complaint, appears to be probable. In the said circumstances, it has to be held that the finding of the courts below that the revision petitioner executed Ext. P2 cheque as contemplated under Section 138 of the N.I.Act, cannot be sustained. In view of the above reasons, the evidence of PW1 is not at all sufficient to prove the execution of Ext. P2 cheque by the revision petitioner. There is no other material before the Court to prove the execution of Ext. P2 cheque by the revision petitioner. In the said circumstances, the verdict of guilty, conviction and sentence passed by the courts below cannot be sustained and consequently, I set aside the same.

In the result, this revision petition stands allowed setting aside the conviction and sentence passed by the courts below

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under Section 138 of the N.I.Act and the revision petitioner is acquitted for the said offence. The bail bond of the revision petitioner stands canceled and he is set at liberty.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

Ani/

/truecopy/

P.S. ToJudge