

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

Crl.Rev.Pet.No. 1113 of 2015 ()

CRA 461/2012 of ADDL. DISTRICT & SESSIONS COURT, VADAKARA
ST 46/2010 of J.M.F.C.-II, NADAPURAM

REVISION PETITIONER)/APPELLANT/ACCUSED:

MOIDU N.
S/O.KUNHABDULLA HAJI, NATHOTH HOUSE, P.O.CHELAKKAD
KUTTIPRAM AMSOM DESOM, P.O.VATAKARA THALUK.

BY ADV. SRI.ZUBAIR PULIKKOOL

RESPONDENTS/RESPONDENT/COMPLAINANTM & STATE:

1. SREE GOKULAM CHIT AND FINANCE COMPANY
CHENNAI, PIN-600 001
BY POWER OF ATTORNEY K.T.SIVADASAN
S/O.P.V.GOVINDAN, PIN 600 001.
2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM, PIN-682 031.

R1 BY ADV. SRI.K.S.BABU
R1 BY ADV. SMT.N.SUDHA
R2 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
08-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1113 of 2015

Dated this the 8th day of September 2015

O R D E R

The revision petitioner is the accused in S.T.No.46 of 2010 on the files of the Court of the Judicial Magistrate of First Class-I1, Nadapuram.

2. The revision petitioner was convicted by the trial court under Section 138 of the Negotiable Instruments Act (for short 'the N.I. Act'). The revision petitioner was sentenced by the trial court to imprisonment till the rising of the court and a fine of Rs.1,05,335/- with a default clause for simple imprisonment for three months. In the appeal, the lower appellate court confirmed the said

conviction and sentence. However, the default sentence was modified and reduced to simple imprisonment for two months. Aggrieved by the said conviction and sentence, the revision petitioner filed this revision petition.

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

4. The prosecution allegation is that the revision petitioner was a subscriber of two chities conducted by the complainant. Towards the discharge of the payment of the chit amount, the revision petitioner issued 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 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. Before the trial court, PW1 was examined and Exts.P1 to P12 were marked for the complainant. The defence did not adduce any evidence. The courts below, relying on the documentary and oral evidence adduced by the complainant, concurrently found that the revision petitioner had 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. The courts below concurrently 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 interfere with the concurrent finding of the courts below that the revision petitioner committed the offence under Section 138 of the N.I. Act.

6. The courts below had taken a very leniency view in the matter of sentence. Therefore, the sentence awarded by the courts below 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 fine, as requested by the learned counsel for the revision petitioner.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

dl/

/ True copy /

PA to Judge