

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

Crl.Rev.Pet.No. 1120 of 2015

Crl.A 859/2009 of ADDITIONAL SESSIONS COURT, IRINJALAKUDA
CC 3070/2008 of J.M.F.C.,IRINJALAKUDA

REVISION PETITIONER/APPELLANT/ACCUSED:

BHASKARAN, AGED 50 YEARS
S/O.ELEDATH RAMAN, IRINJALAKUDA DESOM
IRINJALAKUDA.P.O., MUKUNDAPURAM TALUK.

BY ADV. SRI.P.K.SAJEEV

RESPONDENTS/RESPONDENTS/STATE & COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
2. ANILKUMAR
S/O.GOVINDANKUTTY MENON, EREKKATH HOUSE
IRINJALAKUDA.P.O., THRISSUR DISTRICT-680 121.

R1 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 10-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1120 of 2015

Dated this the 10th day of September 2015

ORDER

The revision petitioner is the accused in C.C. No.3070 of 2008 on the files of the Court of the Judicial Magistrate of First Class, Irinjalakuda

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I.Act') and sentenced him thereunder to simple imprisonment for six months and to pay a compensation of Rs.50,000/- to the complainant under Sec. 357 (3) Cr.P.C. In the appeal filed against the said

conviction and sentence, the Additional Sessions Judge, Irinjalakuda as per judgment in Crl. Appeal No.859 of 2009 confirmed the conviction and modified the sentence of imprisonment to imprisonment till the rising of the court. The compensation awarded by the court below was confirmed. Aggrieved by the said conviction and sentence, this Revision Petition has been filed.

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

4. The prosecution allegation is that the revision petitioner borrowed an amount of Rs.50,000/- 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 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 P6 were marked for the complainant before the trial court. PW1 was not cross-examined by the revision petitioner before the trial court, eventhough sufficient opportunity was given to him. 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.P1 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 below was perverse or incorrect. The defence set up by the revision petitioner was also repelled by the courts below. 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 lenient 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 four months time to pay the compensation, as requested by the learned counsel for the revision petitioner.

The revision petitioner shall be at liberty to pay the compensation directly to the complainant, provided a receipt in this regard shall be produced before the trial court.

**Sd//
B.SUDHEENDRA KUMAR,
JUDGE.**

dl

/ True copy /

PA to Judge