

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

Crl.Rev.Pet.No. 1130 of 2015 ()

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CRA 440/2011 of ADDL. D.C. & SESSIONS COURT - IV, KOLLAM  
CC 4/2009 of J.M.F.C.-III, KOTTARAKAKARA

REVISION PETITIONER/APPELLANT/ACCUSED:

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SAJI P.  
S/O.VARKEY, PAINGOTTU HOUSE, THERMALA VELLADU P.O.  
KARUVANCHAL, KANNUR DISTRICT.

BY ADVS.SRI.M.T.SURESHKUMAR  
SRI.S.SANAL KUMAR  
SMT.SMITHA PHILIPOSE  
SMT.BHAVANA VELAYUDHAN

RESPONDENTS/RESPONDENT/COMPLAINANT:

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1. SAJI THOMAS  
S/O.THOMAS, EDASSERIKKATTIL  
UDYAGA GIRI P.O.ALAKKODU (VIA)  
KANNUR DISTRICT NOW RESIDING AT SHIBU BHAVAN  
PADINJARETHERUVU  
KIZHAKKETHERUVU P.O., KOTTARAKKARA - 691 506.

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

R2 BY PUBLIC PROSECUTOR, SHRI.GITHESH R.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON  
11-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**B.SUDHEENDRA KUMAR, J.**

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Crl.R.P. No.1130 of 2015  
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Dated this the 11<sup>th</sup> day of September 2015

**O R D E R**

The revision petitioner is the accused in C.C. No.4 of 2009 on the files of the Court of the Judicial Magistrate of First Class -III, Kottarakkara.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act (for short 'the N.I. Act') and sentenced him thereunder to imprisonment till the rising of the court and a fine of Rs.1,60,000/- with a default clause for simple imprisonment for two months. The appeal filed against the

said conviction and sentence was dismissed by the appellate court as per judgment in Crl.Appeal No.440 of 2011. Aggrieved by the said conviction and sentence, the revision petitioner has filed this revision petition.

3. Heard the learned counsel for the petitioner and the learned public prosecutor.

4. The prosecution allegation is that the revision petitioner received an amount of R.1,60,000/- from the complainant and towards the discharge of the said liability, the revision petitioner issued Ext.P1 cheque in favour of the complainant. The said cheque was presented 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 and PW2 were examined and Exts.P1 to P7 were marked for the complainant. No evidence was adduced on the side of the defence.

6. The courts below, relying on the evidence of PW1 and PW2 and the documentary evidence adduced by the complainant, concurrently found that the revision petitioner executed Ext.P1 cheque as contemplated under Section 138 of the N.I. Act. Since there is concurrent finding on facts by the courts below, 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 finding of the courts below

was perverse or incorrect. In the said circumstances, the concurrent finding of the courts below that the revision petitioner committed the offence under Section 138 of the N.I. Act does not warrant any interference by this court. The courts below had taken a very lenient view in the matter of sentence. In the said circumstances, 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 six months to pay the fine as requested by the learned counsel.

**Sd//**

**B.SUDHEENDRA KUMAR,  
JUDGE.**

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*PA to Judge*