

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

Crl.Rev.Pet.No. 1743 of 2011 ()

AGAINST THE JUDGMENT IN CRA 11/2010 of ADDL. SESSIONS
JUDGE, ALAPPUZHA. DATED 20-12-2010

AGAINST THE JUDGMENT IN CC 302/2009 of J.M.F.C.-II,
ALAPPUZHA DATED 8-12-2009

REVISION PETITIONER(S)/REVISION
PETITIONER/APPELLANT/ACCUSED:

NOUSHAD, AGED 44 YEARS,
S/O. SHAMSUDHEEN, RESIDING AT PURATHECHIRA,
PUNNAPRA.P.O. ALAPPUZHA.

BY ADVS.SRI.C.A.CHACKO
SMT.C.M.CHARISMA

RESPONDENT(S)/COMPLAINANT:

1. THE ALAPPUZHA DISTRICT CO-OPERATIVE BANK
LTD., MORNING & EVENING BRANCH
ALAPPUZHA, REPRESENTED BY ITS BRANCH MANAGER
KIDANGAMPARAMBU, ALAPPUZHA. PIN - 688001

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

R1 BY ADVS. M/S.ALAN PAPALI, SOJAN MICHEAL,
& ADV. GILBERT GEORGE CORREYA
BY PUBLIC PROSECUTOR SRI. V.S. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 14-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Crl.R.P. No. 1743 of 2011

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Dated this the 14th day of October, 2015

ORDER

The revision Petitioner is the accused in C.C. No. 302 of 2009 on the files of the Court of the Judicial Magistrate of First Class - II, Alappuzha. The trial Court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him thereunder to simple imprisonment for six months and to pay a compensation of Rs. 1,00,000/- to the complainant under Section 357 (3) Cr.P.C. In appeal, the conviction was confirmed and the sentence was modified to imprisonment till the rising of the court and to pay a compensation of Rs. 1,10,000/- with a default clause for simple imprisonment for four months. Aggrieved by the said conviction and sentence, this revision petition has been filed.

2. Heard both sides.

3. The prosecution allegation is that the revision petitioner borrowed an amount of Rs. 1,00,000/- from the complainant and towards the discharge of the said liability, the revision petitioner issued Ext. P4 cheque in favour of the complainant. The

complainant presented the cheque for encashment. However, the same was dishonoured for the reason "not arranged for". 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 P8 were marked for the complainant. No evidence was adduced on the side of the defence.

6. The learned counsel for the revision petitioner has argued that the revision petitioner was not granted sufficient opportunity to cross-examine PW1 and hence, serious prejudice was caused to him. It appears from the proceedings of the Court below that PW1 was examined on 21-10-2009. On that day, PW1 was not cross-examined by the revision petitioner. Therefore, the case stood posted to 4-11-2009. On that day also, the revision petitioner prayed for time for cross-examination of PW1. The court directed the revision petitioner to deposit an amount of Rs. 500/- as cost and posted the case to 12-11-2009. On 12-11-2009, since the cost was not deposited, the court below closed evidence. The revision petitioner stated during his examination under Sec. 313 Cr.P.C. that he was not aware as to how Ext. P4 cheque happened to be in possession of the complainant. The complainant is a Bank. The learned counsel for the revision petitioner submitted that the revision petitioner

could not raise the amount and it was only because of that reason that the revision petitioner did not deposit the amount before the Court on 12-11-2009.

7. Having gone through the relevant inputs, I am of the view that it is only just and proper to grant one more opportunity to the revision petitioner to cross-examine PW1 and to contest the matter on merits. For the said reason, I am inclined to set aside the judgment of the courts below.

In the result, this Revision Petition stands allowed setting aside the conviction and sentence passed by the courts below and the matter is remitted to the trial court for fresh disposal of the case, in accordance with law, affording reasonable opportunity to the revision petitioner to cross-examine PW1.

The revision petitioner and the first respondent shall appear before the court below on 12-11-2015 without further notice. This being a case of 2009, the trial court is directed to dispose of the case as expeditiously as possible and at any rate, within four months from the date of receipt of this order.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

Ani/

/truecopy/

P.S. To Judge