

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

Crl.Rev.Pet.No. 1167 of 2015 ()

CRA 525/2013 of ADDITIONAL DIST. & SESSIONS COURT, MOOVATTUPUZHA
CC 202/2012 of J.M.F.C. - II, PERUMBAVOOR

REVISION PETITIONER:

SHABIN, S/O.LATHEEF
AYAPURACKAL HOUSE
PONJASSERY PO
ERNAKULAM DISTRICT
PIN 683 547

BY ADV. SRI.SHIBU VARGHESE

RESPONDENTS:

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1. SACHIN G.S., S/O.GANAPATHY
AKAMPILLI HOUSE, KANJIRAKKADU
RAYONAPURAM PO
ERNAKULAM DISTRICT, PIN 683 543
 2. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM, COHIN 31

BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 18-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1167 of 2015

Dated this the 18th day of September 2015

ORDER

The revision petitioner is the accused in C.C. No.202 of 2012 on the files of the Court of the Judicial Magistrate of First Class – II, Perumbavoor.

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 to pay a compensation of Rs.1,00,000/- to the complainant under

Section 357(3) Cr.P.C. with a default clause for simple imprisonment for four months. The appeal filed against the said conviction and sentence was dismissed by the appellate court as per judgment in CrI.Appeal No.525 of 2013. Aggrieved by the said conviction and sentence, the revision petitioner has 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 borrowed an amount of R.1,00,000/- 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, the complainant himself got examined as PW1 and Exts.P1 to P5 were marked for the complainant. DW1 was examined and Exts.D1 and D2 were marked for the revision petitioner.

6. The courts below, after evaluating the oral and the documentary evidence adduced by both the parties, concurrently found that the revision petitioner executed Ext.P1 cheque as contemplated under Section 138 of the N.I. Act. The defence set up by the revision petitioner was

repelled by the courts below. 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. 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 finding of the courts below that the revision petitioner committed the offence under Section 138 of the N.I.Act. The sentence awarded by the courts below also does not call for any interference by this court.

In this result, this revision petition stands dismissed.

However, the revision petitioner is granted six months to pay the compensation, as requested by the learned counsel for the revision petitioner.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

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/ True copy /

PA to Judge