

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

Crl.Rev.Pet.No. 1195 of 2015 ()

AGAINST THE JUDGMENT IN CRL.APPEAL 436/2010 of DISTRICT & SESSIONS COURT, THRISSUR DATED 21-12-2013

AGAINST THE JUDGMENT IN CC 137/2009 of JUDICIAL MAGISTRATE OF FIRST CLASS-II, CHALAKUDY DATED 17-06-2010

PETITIONER/APPELLANT/ACCUSED:

LOHITHADAS K.K. AGED 36YEARS
S/O KUNJAPPAN, KACHANI KODATH HOUSE
KOONAMMAVU JUNCTION, VARAPUZHA
ERNAKULAM DISTRICT-683517.

BY ADVS.SRI.RAAJESH S.SUBRAHMANIAN
SRI.V.R.RAJESH

RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE:

1. DR.C.G.PRAKASHAN
S/O GOPALAN, CHETTIPARAMBATH AYUR PRODUCTS
CHAKKAMPARAMBU MALA, CHALAKKUDY
THRISSUR DISTRICT-680732.
2. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.

R1 BY ADV. SMT.K.SHERLY
R1 BY ADV. SRI.ARJUN S.RAJ
R2 BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 28-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No. 1195 of 2015

Dated this the 28th day of September, 2015

ORDER

The revision petitioner is the accused in CC No. 137/2009 on the files of the court of the Judicial Magistrate of First Class-II, Chalakkudy.

2. 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 a fine of Rs.50,000/- with a default clause for simple imprisonment for three months. The appeal filed against the said conviction and sentence was allowed in part, confirming the conviction and modifying the sentence to imprisonment till the rising of the court and a fine of Rs.50,000/-, by the Sessions court as per judgment in Crl.Appeal 436/2010. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard.

4. The prosecution allegation is that the revision petitioner purchased ayurvedic medicine from the complainant on credit basis and towards the discharge of the said liability, the revision petitioner issued Exts.P2, P3 and P4 cheques in favour of the complainant. The complainant presented the said cheques for encashment. However, the said cheques were dishonoured due to insufficiency of funds in the account of the revision petitioner. Statutory notice was issued on behalf of the complainant 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 to PW3 were examined and Exts. P1 to P26 were marked for the complainant. No evidence was adduced by the defence. After evaluating the oral and documentary evidence adduced by the complainant, the courts below concurrently found that the revision petitioner executed Exts. P2 to P4 cheques 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 concurrent finding by the courts below is perverse or incorrect. In the said circumstances, the concurrent finding by the courts below that the revision petitioner committed the offence under Section 138 of N.I Act does not warrant any interference by this court. The appellate court had taken a very lenient view in the matter of sentence. In the said circumstances, I find no reason to interfere with the sentence as well.

In the result, this revision petition stands dismissed. However, the revision petitioner is granted six months time to pay the fine amount, as requested by the learned counsel for the revision petitioner.

Sd/-
B.SUDHEENDRA KUMAR
JUDGE

sm/