

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

Crl.Rev.Pet.No. 1207 of 2015 ()

CRA 607/2011 of II ADDL.S.C.THIRUVANANTHAPURAM
CC 123/2009 of JMFC-V, (SPL.COURT-MARKLIST CASES), THIRUVANANTHAPURAM

REVISION PETITIONER/APPELLANT:

A. BASHEER HASSAN
S/O.ABDULLA, MANNAMVILAKAM HOUSE
VETTOR PO, VARKALA
THIRUVANANTHAPURAM

BY ADV. SRI.M.R.SUDHEENDRAN

RESPONDENTS/RESPONDENTS/ COMPLAINANT:

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1. M/S. SHRIRAM INVESTMENTS LTD.
SREE SADAN BUILDINGS, CONVENT ROAD
VANCHIYOOR, THIRUVANANTHAPURAM
REPRESENTED BY ITS ASST. BRANCH MANAGER,
SRI. BINO THOMAS, S/O.N K THOMAS
 2. STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA

R2 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
29-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1207 of 2015

Dated this the 29th day of September 2015

O R D E R

The revision petitioner is the accused in C.C. No.123 of 2009 on the files of the Court of the Judicial Magistrate of First Class-V (Special Court for Mark list cases), Thiruvananthapuram.

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 one month and a fine of Rs.1,79,586/-. In the appeal filed against the said conviction and sentence, the conviction

was confirmed and the sentence was modified and reduced to imprisonment till the rising of the court and a fine of Rs.1,79,586/- with a default clause for simple imprisonment for three months. 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 availed a loan of Rs.1,79,596/- for purchasing a vehicle from the complainant company and towards the discharge of the said liability, the revision petitioner issued Ext.P2 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. Before the court below, 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 courts below, relying on the documentary as well as oral evidence adduced by the complainant, concurrently found that the revision petitioner had executed Ext.P2 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 of the courts below 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. 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.

7. The appellate court had taken a very lenient view in the matter of sentence. In the said circumstances, the sentence awarded by the appellate court 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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/ True copy /

PA to Judge