

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

Crl.Rev.Pet.No. 1221 of 2015 ()

JUDGMENT IN Crl.A 26/2013 OF ADDITIONAL SESSIONS COURT-I, PALAKKAD
DATED 06-07-2015

JUDGMENT IN ST 720/2011 OF THE CHIEF JUDICIAL MAGISTRATE COURT,
PALAKKAD DATED 10-01-2013

REVISION PETITIONER/APPELLANT/ACCUSED:

MAHESH M.S., AGED 35 YEARS
S/O. SREEKUMARAN NAIR, KUNJUVEEDU,
NEMOM JUNCTION, NEMOM, THIRUVANANTHAPURAM.

BY ADVS.SRI.PRASUN.S
SRI.PAUL MATHEW (PERUMPILLIL)

RESPONDENTS/STATE AND COMPLAINANT:

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM,
PIN- 682 031.
 2. SREE GOKULAM CHIT AND FINANCE CO. (P) LTD,
SANJOS TOWERS, OPPOSITE K.S.R.T.C.BUS STAND,
PALAKKAD, REPRESENTED BY ITS LEGAL CLERK
K.K.SUBASHKUMAR, AGED 29 YEARS, S/O. KRISHNAN,
RESIDING AT PULINELLI, KOTTAYI, PALAKKAD.

R2 BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 05-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl. R.P. No. 1221 of 2015

Dated this the 5th day of October, 2015.

ORDER

The revision petitioner is the accused in S.T.C.No.720 of 2011 on the files of the court of the Chief Judicial Magistrate, Palakkad.

2. The trial court convicted the revision petitioner under Section 138 of the Negotiable Instruments Act and sentenced him thereunder to simple imprisonment for one month and to pay an amount of ₹1,20,943/- as compensation to the complainant under Section 357(3) Cr.P.C. with a default clause for simple imprisonment for two months. In the appeal filed against the said conviction and sentence, the appellate court confirmed the conviction and modified the sentence to a fine of ₹1,20,943/- with a default clause for simple imprisonment for two months. Aggrieved by the said conviction and sentence, this revision petition has been filed.

3. Heard the learned counsel for the petitioner.

4. The prosecution case is that the revision petitioner was a subscriber of Chitty conducted by the complainant. The revision petitioner bid the chit and received the chit amount. However, thereafter, the revision petitioner failed to pay the chit installments. Towards the discharge of the liability due to the complainant, the revision petitioner issued Ext.P1 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 on behalf of the revision petitioner, which was returned unserved as the revision petitioner refused to accept the same even after the receipt of intimation from the postal authorities.

5. Before the trial court, PW1 was examined and Exts.P1 to P6 were marked for the complainant. No evidence was adduced on the side of the revision petitioner.

6. The courts below after evaluating the oral and 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. 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 sentence awarded by the appellate court appears to be reasonable. 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 time to pay the fine as requested by the learned counsel for

the revision petitioner. Needless to say that, if any amount is deposited by the revision petitioner, the complainant is entitled to receive the same.

Sd/-

**B. SUDHEENDRA KUMAR
JUDGE**

Scl.

True Copy

PA to Judge