

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

Crl.Rev.Pet.No. 1237 of 2015 ()

AGAINST THE JUDGMENT IN CRA 104/2013 of I ADDL.SESIONS
COURT - I, PALAKKAD DATED 07-09-2015

AGAINST THE JUDGMENT IN CC 45/2011 of J.M.F.C.-II, PALAKKAD
DATED 25-03-2013

REVISION PETITIONER(S):

SWAMINATHAN AGED 41 YEARS,
S/O. SUBRAMANIAN, THARAYAKKODE HOUSE,
EZHAKKAD P.O. MUNDUR, PALAKKAD

BY ADVS.SRI.I.DINESH MENON
SRI.L.RAJESH NARAYAN

RESPONDENT(S):

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM - 682 031
2. DENNY, AGED 42 YEARS,. S/O. ITTAYACHAN,
PROPRIETOR, MECHANO MOTORS,
MANAPULLIKAVU, PALAKKAD - 678 001

BY PUBLIC PROSECUTOR SRI. V.S. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 06-10-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Dated this the 6th day of October, 2015

ORDER

The Revision Petitioner is the accused in C.C. No. 45 of 2011 on the files of the Court of the Judicial Magistrate of First Class – II, Palakkad.

2. The revision Petitioner was convicted under Section 138 of the Negotiable Instruments Act, 1881 (for short “the N.I.Act”) by the trial Court and sentenced to imprisonment till the rising of the Court and to pay compensation of ₹50,000/- to the complainant under Sec. 357 (3) Cr.P.C. with a default clause for simple imprisonment for three months.

3. Against the said conviction and sentence, the revision petitioner filed appeal before the Sessions Court, Palakkad. As per judgment dated 7th September 2015 in Crl.Appeal No. 104/2013,

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the learned Addl. Sessions Court dismissed the said appeal. Aggrieved by the said conviction and sentence, the accused before the trial court has filed this Crl. Revision Petition.

4. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

5. The prosecution allegation is that the revision petitioner issued Ext. P1 cheque in favour of the complainant towards the discharge of the liability in connection with the mechanical work of his vehicle done by the complainant. The complainant presented the 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 pay the cheque amount within the statutory period or thereafter.

6. Before the trial court, the complainant himself got

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examined as PW1 and Exhibits P1 to P5 were marked for the complainant. No evidence was adduced on the side of the revision petitioner.

7. The courts below relied on the documentary as well as oral evidence adduced by the complainant and came to the conclusion that the appellant 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 appreciation of evidence by the courts below was perverse or incorrect. In the said circumstances, the finding of the courts below that the revision petitioner committed the offence under Section 138 of the N.I.Act does not call for any interference by this Court.

8. The courts below had taken a very lenient view in the matter of sentence. Therefore, I do not find any 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 compensation as requested by the learned counsel for the revision petitioner.

Sd/- B. SUDHEENDRA KUMAR,
JUDGE.

Ani/

/truecopy/

P.S. To Judge