

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

Crl.Rev.Pet.No. 1268 of 2015 ()

**AGAINST THE ORDER/JUDGMENT IN CRA NO. 474/2012 of ADDITIONAL DISTRICT AND
SESSIONS JUDGE- II, NORTH PARAVUR.**

**AGAINST THE ORDER/JUDGMENT IN ST NO. 24/2011 of THE JUDICIAL FIRST CLASS
MAGISTRATE COURT-II, NORTH PARAVUR**

REVISION PETITIONER/APPELLANT/ACCUSED

**P.N. INDIRA, AGED 55 YEARS,
W/O. GIREESAN, KOTTADAYIL HOUSE,
NETTOOR P.O., ERNAKULAM DISTRICT NOW RESIDING AT P& T QUARTERS,
B.P 6, THEVARA, COCHIN – 13.**

BY ADV. SRI.M.A.SHIHAB

RESPONDENTS/RESPONDENTS/STATE & COMPLAINANT:

- 1. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM – 682 031.**
- 2. VERGHESE, AGED 40 YEARS, MANAGING PARTNER, VYPIN KURIES &
FINANCE, CHERAI, KAVITHA GOLD SUPER MARKET, S/O. OSEPH,
KUZHUPPILLY HOUSE, KEDAMENGALAM KARA, PARAVUR VILLAGE,
PARAVUR TALUK – 683 513.**

R BY PUBLIC PROSECUTOR SRI. R. GITHESH

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 09-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

B. SUDHEENDRA KUMAR, J.

Crl.R.P.No. 1268 of 2015

Dated this the 09th day of October, 2015

ORDER

The Revision Petitioner is the accused in ST No.24 of 2011 on the files of the Court of the Judicial Magistrate of First Class-II, N.Paravur. 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 simple imprisonment for six months and a fine of ₹ 2,00,000/- with a default clause for simple imprisonment for one month.

2. In the appeal filed against the said conviction and sentence, the appellate court confirmed the conviction and modified and reduced the sentence to imprisonment till the rising of the court and to pay a compensation of ₹ 2,00,000/- to the complainant under Section 357 (3) Cr.P.C. Aggrieved by the said conviction and sentence, this revision petition has been filed.

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

4. The prosecution allegation is that the revision petitioner issued Ext. P1 cheque towards the discharge of the liability of the revision petitioner to 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 returned as unserved as the revision petitioner refused to accept the same even after getting intimation from the postal authorities. The revision petitioner did not pay the cheque amount within the statutory period or thereafter.

5. Before the court below, PW1 was examined and Exts. P1 to P9 were marked for the complainant. No evidence was adduced on the side of the revision petitioner.

6. The courts below relied on the documentary as well as oral evidence adduced by the parties and came to the conclusion 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 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 N.I. Act does not call for any interference by this Court.

7. The appellate court had taken a very lenient view in the matter of sentence. Therefore, 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 compensation as requested by the learned counsel for the revision petitioner.

Sd/-
B. SUDHEENDRA KUMAR,
JUDGE.

//True copy//

P.A. to Judge