

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. 1275 of 2015 ()

CRA 799/2012 of ADDL. & SESSIONS COURT - VIII, ERNAKULAM
CC 716/2010 of ADDL.C.J.M.(E&O),ERNAKULAM

REVISION PETITIONER/APPELLANT/ACCUSED:

JAY JOHN @ JAYMON, AGED 39 YEARS
S/O.SHRI BABY JOHN MENACHERY, MENACHERY HOUSE
ELAVOOR PO, ANGAMALI, ERNAKULAM DISTRICT

BY ADVS.SRI.K.B.ARUNKUMAR
SRI.RANJIT BABU

RESPONDENTS/COMPLAINANT & STATE:

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1. SEBASTIAN, AGED 66 YEARS
S/O.LATE SRI.PAILY
MENACHERY HOUSE, POWER HOUSE LINK ROAD
PALARIVATTOM, ERNAKULAM DISTRICT PIN 682 025.
 2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
KOCHI 682 031.

R2 BY PUBLIC PROSECUTOR, SHRI.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.1275 of 2015

Dated this the 9th day of October 2015

O R D E R

The revision petitioner is the accused in C.C. No.716 of 2010 on the files of the Court of the Additional Chief Judicial Magistrate (Economic Offences), Ernakulam.

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 imprisonment till the rising of the Court and a compensation of Rs.2,50,000/- to the complainant under Section 357(3) Cr.P.C. with a default clause for simple imprisonment 30

days. The appeal filed against the said conviction and sentence was dismissed by the appellate Court. 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 borrowed an amount of Rs.3,00,000/- from the complainant and out of the said loan, he repaid Rs.1,00,000/-. Towards the discharge of the balance amount, 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 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 was examined and Exts.P1 to P5 were marked for the complainant. Ext.X1 to X3 were also marked.

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.P1 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 sentence awarded by the courts below also appears to be reasonable. In the said circumstances, the sentence awarded by the courts below also does not call for any interference by this court.

In the result, this revision petition stands dismissed.

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

dl

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PA to Judge